TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 140.

THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL SEMINARY, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS *EX REL.* SAMUEL B. RAYMOND, COUNTY TREASURER AND *EX OFFICIO* COLLECTOR OF COOK COUNTY, ILLINOIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED JULY 22, 1901.

(18,233.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 23, 1902.

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a UNITED STATES OF AMERICA, *ss:*

To the People of the State of Illinois *ex rel.* Samuel B. Raymond, county treasurer and *ex officio* collector of Cook county, Illinois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois, wherein The Board of Directors of the Chicago Theological Seminary is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Jacob W. Wilkin, chief justice of the supreme court of the State of Illinois this 27th day of June, in the year of our Lord one thousand nine hundred and one.

JACOB W. WILKIN,
Chief Justice of the Supreme Court of the State of Illinois.

We hereby acknowledge due service of the above citation.
July 12th 1901

EDWIN W. SIMS,
County Attorney,
FRANK L. SHEPARD,
Ass't Co. Attorney,
W. F. STRUCKMANN,
Ass't Co. Attorney,
Attorneys for the People of the State of Illinois ex Rel. the Appellee in said Suit in the Supreme Court of Illinois.

Rec'd copy of the above citation.

JULIUS A. JOHNSON,
One of the Attorneys in the Supreme Court of Illinois for Defendant in Error and at that Time County Attorney.

[Endorsed:] (4) The Board of Directors of the Chicago Theological Seminary *vs.* People of the State of Illinois *ex rel.* &c. Citation of Jacob W. Wilkin chief justice of supreme court of Illinois, &c.

b In the Supreme Court of Illinois.

BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL SEMINARY *vs.* THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* Samuel B. Raymond, County Treasurer and *ex Officio* Collector of Cook County.	Appeal from County Court of Cook —.

I, Christopher Mamer, clerk of said court, do hereby certify that on the eleventh day of July in the year of our Lord one thousand

nine hundred and one, a copy of the foregoing citation was lodged in my office at Springfield.

Witness my hand and the seal of this court this 11th day of July, A. D. 1901.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

{ Ten-cent United States internal-revenue stamp, canceled Jul- 11, 1901. }

c UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings as also in the rendition of the judgment, of a plea which is in the said supreme court of the State of Illinois before you, or some of you being the highest court of law or equity of the said State in which a decision could be had in said suit between The Board of Directors of the Chicago Theological Seminary and The People of the State of Illinois *ex rel.* Samuel B. Raymond, county treasurer and *ex officio* collector of Cook county Illinois wherein was drawn in question the validity of the statute of the State of Illinois, being the general revenue act of the State of Illinois, approved March 30, 1872 and in force July 1 1872, entitled "An act for the assessment of property and for the levy and collection of taxes" with its amendments was drawn in question in said suit by said The Board of Directors of the Chicago Theological Seminary, on the ground that the said general revenue act of the State of Illinois impaired the obligation of the contract arising from the charter granted to the plaintiff in error by the State of Illinois, and was repugnant to the Constitution of the United States and that the decision of said supreme court of Illinois was in favor of the validity of said statute that in said suit the validity of the authority exercised by the officers of the State of Illinois under said general revenue act, in levying the taxes for which judgment was rendered in said suit and in rendering said judgment, was also drawn in question in said suit by said The Board of Directors of the Chicago Theological Seminary on the ground that said authority exercised under said statute impaired the obligation of the contract arising from the charter granted to the plaintiff in error by the State of Illinois, and was repugnant to the Constitution of the United States and that the decision of the supreme court of Illinois was in favor of the
d validity of said authority so exercised under said act; that certain rights and privileges were also claimed under the Constitution of the United States by said The Board of Directors of the Chicago Theological Seminary, and that said rights and privileges were specially set up and claimed under said Constitution, and that said supreme court of the State of Illinois erroneously decided against said rights of the said The Board of Directors of said Chicago

Theological Seminary; from all of which the said The Board of Directors of the Chicago Theological Seminary alleges that it appears in said record and proceedings in said suit, that manifest error has occurred, to the great damage of said The Board of Directors of the Chicago Theological Seminary; we being willing that the error if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington within 30 days from the date hereof in the said Supreme Court to be then and there held, that the record of proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

The Seal of the Circuit Court of the United States for the South'n Dist. Ill.

Witness the Hon. Melville W. Fuller, Chief Justice of the said Supreme Court the 11th day of July in the year of our Lord one thousand nine hundred and one and of our Independence the one hundred and twenty-sixth year.

JAMES T. JONES,
Clerk Circuit Court U. S., South'n Dist. Ills.

In the Supreme Court of Illinois.

BOARD OF DIRECTORS OF THE CHICAGO Theological Seminary, *vs.* THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* Samuel B. Raymond, County Treasurer and *ex Officio* Collector of Cook County.	Appeal from County Court of Cook —.

I, Christopher Mamer, clerk of the supreme court, do hereby certify that on the eleventh day of July, in the year of our Lord one thousand nine hundred and one, a copy of the foregoing writ of error for the defendant in error was lodged in my office at Springfield.

Witness my hand and the seal of said court this 11th day of July, A. D. 1901.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

{Ten-cent United States internal-revenue stamp, canceled Jul- 11, 1901.}

f In the Supreme Court of Illinois.

BOARD OF DIRECTORS OF THE CHICAGO Theological Seminary *vs.* THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* Samuel B. Raymond, County Treasurer and *ex Officio* Collector of Cook County.	Appeal from County Court of Cook —.

I, Christopher Mamer, clerk of the supreme court of Illinois, in and for the northern grand division, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from one (1) to one hundred and seven (107) inclusive, contain a true and complete transcript and copy of the record and proceedings had in said court, in the case which is above entitled, and of the whole thereof, including the opinion of the court, and certificate of the chief justice of said court, as the same remain of record and on file in my said office.

In testimony whereof, I have hereunto set my hand and caused the seal of the said supreme court of Illinois to be hereunto affixed, at Springfield, in said State, this eleventh day of July, in the year of Lord one thousand nine hundred and one.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

{Ten-cent United States internal-revenue stamp, canceled Jul- 11, 1901.}

1 At a supreme court, begun and held at Springfield, on Tuesday the fourth day of December in the year of our Lord one thousand nine hundred, within and for the State of Illinois.

Present: Carroll C. Boggs, chief justice, Benjamin D. Magruder, justice, Jacob W. Wilkin, justice, Jesse J. Phillips, justice, Joseph N. Carter, justice, James H. Cartwright, justice, John P. Hand, justice, Edward C. Akin, attorney general, Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, that afterwards, to wit: on the fifth day of December, A. D. 1900, there was filed in the office of the clerk of said court a certain transcript of the record and proceedings of the county court of Cook county, which said transcript is in the words and figures following, viz:

STATE OF ILLINOIS, } ss:
County of Cook, }

Pleas before the Honorable R. W. S. Wheatley, county judge of Perry county, presiding as judge of the county court of Cook county at the request and in the absence of the Honorable Orrin N. Carter, sole presiding judge of the county court of Cook county, in the State of Illinois, at a regular term of said county court of Cook county begun and holden at the court-house, in the city of Chicago, in said county and State, on the second Monday, being the 8th day, of October, in the year of our Lord one thousand nine hundred, and of the Independence of the United States of America the one hundred and twenty-fifth.

Present: The Honorable R. W. S. Wheatley acting judge of the county court of Cook county. Ernest L. Magerstadt, sheriff of Cook county.
Attest: PHILIP KNOPF, *Clerk*.

Be it remembered that heretofore, to wit: on the 21st day of June in the year of our Lord one thousand nine hundred, the same being one of the days of the June term of the county court of Cook county, the following certificate of publication was filed with the clerk of said court in words and figures as follows to wit:

Office of the county treasurer and *ex officio* county collector, Cook county, Illinois.

CHICAGO, *June* 15, 1900.

The following is a list of delinquent lands and lots in the county of Cook and State of Illinois upon which remain due and unpaid the taxes levied and assessed for the year 1899, and upon which remain due and unpaid the amount for which said lands and lots have been previously forfeited to the State of Illinois (where and such forfeiture are noted) and which remained unpaid on the first day of
3 November A. D. 1899, and interest and printers' fees added to said amounts, as required by law, and upon which also remain due, and unpaid back taxes for the year 1898 and prior years added (where the same are specifically set forth) together with the interest and printers' fees thereon, if any, contained and set forth in the collector's books with the warrants attached thereto, issued by the county clerk of said county for the year 1899, which now remain due and unpaid; and the total amount due and unpaid on each tract of land or lot, and the taxes for the year 1899, due and unpaid, bear interest from the 1st of May, 1900, at the rate of 1 per cent. per month until paid or forfeited, parts or fractions of a month being reckoned as a month.

Explanatory.—In this list, in all places where no other notation is made, the figures in the colum- headed "$" (meaning dollars)

and "cts." (meaning cents) represents the taxes due and unpaid for the year 1899. When the letters "For." are placed to the left of the figures in this colum- they are intended for an abbreviation of the word "forfeiture" and denote that the amounts set down to the right of the same are the amounts due on said lands and lots previously forfeited to the State and remaining due and unpaid on the 1st day of November, A. D. 1899. When back taxes are extended the year for which such taxes are due is placed to the left of the amount.

4 Canal trustees' subd'n of sec. 7, T. 39, R. 14:

	Lots.	Bl'k.	$ Cts.
C. T. Gem 10 and E. ½	11	46	39.53

Canal trustees' subd'n of sec. 7, T. 39, R. 14, subd'n of lots 5 and 6:

	Lots.	B.	$ Cts.
Sublots	1	50	
	2	"	
	3	"	
	4	"	$548.67

Ashland 2d add'n to Chicago in sec. 18, T. 39, R. 14, subd'n lots 1 to 4, bl'k 16:

J. H. Pearson, sublot 1 ..... $100.71

Bronson's add'n to Chicago, assessors' divis. of lots 9 to 10:

Sublot 1 ..... $563.99

5 James W. Scoville's subd'n W. ½ N. E. ¼, sec. 7, T. 39, R. 13, subd'n of bl'k 23:

	L.	B.	$ Cts.
C. B. Seaville	16	23	31 48
"	17	"	13 68
C. Worthington	18	"	26 79
C. B. Gearville	19	"	13 68
Chicago Theo. Seminary	20	"	44 83
"	21		
Est. C. Meacham	22	"	33 40
G. B. Seaville	23	"	13 68
Chicago Theo. Seminary	24	"	34 40
C. B. Seaville	25	"	13 68
"	26	"	13 68
			$239 30

Maywood, being subd'n of S. ½ S. W. ¼, sec. 2, T. 39, R. 12; W. ½ sec. 11, T. 39, R. 12; N. W. ¼ sec. 14, T. 39, R. 12:

	Lots.	Bl'k.	$ Cts.
Mead and Co.....	23	206	3 23
"	24	"	3 23
"	25	"	3 23
"	26	"	3 23
"	27	"	3 23
			$16 15

6 E. 10 acres, S. 30 acres, W. ½ N. W. ¼, sec. 28, T. 40, R. 13:

	$ Cts.
Chicago Theo. Seminary.....	$61.05

Western add'n sub's'n of W. ½ S. E. ¼, sec. 15, T. 39, R. 12:

	Lots.	Bl'k.	$ Cts.
F. E. Ballard	1	1	61
"	2	"	48
"	3	"	48
			$1.57

Chytran's add'n to Argyle, subd'n S. W. ¼, sec. 8, T. 40, R. 14, subd'n of lot 44, Brown's 2n- add'n and bl'k 6:

	Lot.		$ Cts.
G. W. Barnette	12	...	$16.43

Bradish and Mizner's add'n to Riverside, being a subd'n of E. ½ N. E. ¼, sec. 24, T. 39, R. 12:

	Lot.	Bl'k.	$ Cts.
Chicago Theo. Seminary	19	16	1 29
"	20	"	1 29
			$2.58

7 Canal trustees' subd'n sec. 7, T. 39, R. 14; assessors' div'n of part of lot 2 and all of sub-bl'k 3 to 7:

	Lot.	Bl'k.	$ Cts.
E. 19, 43 ft.....	4	64	$86.90
Chicago Theo. Seminary.			

Canal trustees' subd'n sec. 7, T. 39, R. 14, Bickerdick's add'n to Chicago:

	Lots.	Bl'k.	$ Cts.
Chicago Theo. Seminary	32 to 36	20	$149.46

Canal trustees' subd'n of sec. 7, T. 39, R. 14, Union Park add'n to Chicago:

	Lots.	Bl'k.	$ Cts.
W. A. and N. E. Ellis.....	16	1	
"	17	"	
"	18	"	
"	19	"	$1734.86

Canal trustees' subd'n sec. 7, T. 39, R. 14, Eastman's subd'n of part of lots 7 and 8:

	Lot.		$ Cts.
Chic. T. S.....	2	...	85.50
Sublot and private alley S. and adj.....	5	...	85.59
Chicago Theo. Seminary.			
			$171.09

8 Ashland 2nd add'n to Chicago, sec. 18, T. 39, R. 14, assessors' division of lots 12 to 16, block 9:

	Lot.		$ Cts.
Sublot	4	...	$42.63
Chicago Theo. Seminary.			

Blocks 26. School Section add'n to Chicago, lots 3 and 4:

	Sublots.		$ Cts.
C. Steam Laundry Cos.....	6		
"	7		
"	8	...	$648.25

9 Public notice is hereby given that the undersigned, county treasurer and *ex officio* county collector of Cook county, State of Illinois, will apply to the county court of said county, at the July term thereof, to commence on the second Monday in July, A. D. 1900, being the nineth (9th) day of July, A. D. 1900, for judgment against the delinquent lands, lots and real estate described in the foregoing list for taxes for the year 1899, and interest and costs due thereon, and for the amounts for which said lands, lots and real estate had been forfeited to the State of Illinois, for the taxes previous to the first day of November A. D. 1899 and remaining due and unpaid on the said 1st day of November together with interest and costs due thereon, and for back taxes for the year 1898 and prior year added and the interest and costs due thereon, and for an order to sell said lands, lots and real estate for the satisfaction thereof, and also that on the fourth Monday next succeeding the second Monday in July A. D. 1900 being the sixth (6th) day of August A. D. 1900 at the hour of 9 o'clock a. m., all the lands lots, and real estate described in said list against which judgment shall have been rendered and for the sale of which an order shall have been made, will be exposed to public sale at the county building, where the county court is held in said county, situate on Clark street, between Randolph and Washington streets in the city of Chicago, in

said county of Cook for the amount of taxes, interest and costs due thereon respectively.

Dated Chicago, June 15, 1900.

S. B. RAYMOND,
County Treasurer and ex Officio County Collector of Cook County, Illinois.

10 STATE OF ILLINOIS, } ss:
Cook County, }

I, Wm. Penn Nixon, being first duly affirmed depose and say, that I am the publisher of the Daily Inter-Ocean, and that the foregoing list of lands and lots contained in the newspaper known as the Daily Inter-Ocean to which this certificate is attached, is a list of the delinquent lands and lots upon which remains due and unpaid the taxes levied and assessed for the year 1899 (and prior years), together with the amounts for which said lands had been previously forfeited to the State of Illinois (when such forfeitures are noted) and which remain due and unpaid on the first day of November A. D. 1899; and also a list of delinquent lands and lots upon which remains due and unpaid special assessments and special taxes levied and assessed by the following corporate authorities, viz: "The Village of Barrington," "The Village of Blue Island," "The Town of Cicero," "The Village of Chicago Heights," "The Village of Desplaines," "The City of Evanston," "The Village of Franklin Park," "The Village of Grossdale," "The Village of Harlem," "The City of Harvey," "The Village of La Grange," "The Village of Maywood," "The Village of Melrose Park," "The Village of Morgan Park," "The Village North Harvey," "The Village of Palatine," "The Village of Park Ridge," "The Village of Riverside," "The Village of River Forest," "The Village of River View," "The Village of West Hammond," "The Village of Western Springs," "The Village of Wilmette," "The Village of Winnetkee," "The City of Chicago," "The Board of South Park Commissioners," "The Board of West Park Commissioners," "The Ridge Avenue Park District," "The Town of Evanston," "The Town of Lake View," with notices hereto attached, and that the same were duly published and advertised pursuant to law. Once in the Daily Inter-Ocean, a newspaper printed and published in the county of Cook and State of Illinois; and the whole of said advertisement was contained in one edition of said newspaper,
11 said newspaper being a newspaper of general circulation throughout said county, and that the date of the newspaper containing the same was the 15th day of June A. D. 1900.

In witness whereof, I have hereunto set my hand and seal this eighteenth day of June A. D. 1900.

WM. PENN NIXON, *Publisher.*

Subscribed, declared and affirmed to, before me this 18 day of June A. D. 1900.

[SEAL.]

J. R. FORD,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

Pleas before the Honorable Orrin N. Carter, sole presiding judge of the county — of Cook county, in the State of Illinois, at a regular term of said county court of Cook county begun and holden at the court-house, in the city of Chicago, in said county and State, on the second Monday, being the nineth day, of July, in the year of our Lord one thousand nine hundred, and of the Independence of the United States of America the one hundred and twenty-fifth.

Court opened by proclamation
Present thereat the Honorable Orrin N. Carter judge of the county court of Cook county Charles S. Deneen State's attorney Ernest J. Magerstadt sheriff of Cook county.
Attest: PHILIP KNOPF,
Clerk of the County Court of Cook County.

In the matter of the application of SAMUEL B. RAYMOND, county treasurer and *ex officio* collector of the revenue of Cook county, in the State of Illinois, for judgment for delinquent State, county, town, school, road, city, village, park, drainage, assessment, and corporation taxes and assessment levied and assessed upon the lands and lots in the county of Cook, in the State of Illinois, for the year 1899, and for the due and unpaid back taxes of 1898 and prior years added, and for forfeitures to the State, together with interest, printers' fees, and costs due and unpaid thereon.

And now on this nineth (9th) day of July A. D. 1900 comes into court Samuel B. Raymond county treasurer and *ex officio*
13 collector of the revenue of Cook county in the State of Illinois by Charles S. Deneen State's attorney in behalf of the People of the State of Illinois and by Julius A. Johnson county attorney of Cook county and by Chas. M. Walker corporation counsel of the city of Chicago in said county and by the attorneys respectively of the various towns and villages in said county and by the attorneys respectively for the various boards of park commissioners in said county and applies for judgment for the delinquent State county town school road city village park drainage assessment and corporation taxes and assessment levied and assessed upon the lands and lots in the county of Cook in the State of Illinois for the year 1899 and for the due and unpaid back taxes of 1898 and prior years added and for forfeitures to the State together with interest printers' fees and costs due and unpaid thereon the record of the delinquent list of said delinquent taxes assessments forfeitures back taxes interest printers' fees and costs being contained and fully set forth in ninety-three volumes numbered one to ninety-three inclusive and hereinafter following and it appearing to the court and

the court finding from evidence here adduced that due notice as required by law has been given of this application for judgment and of the time and place thereof. Thereupon on motion of said Samuel B. Raymond by his attorney respectively as hereinabove set out

It is ordered by the court that any and all parties desiring to object to the rendition of judgment herein file their objections in writing on or before 10 a. m. Wednesday July 11th, A. D. 1900.

14 The following is a list *if* delinquent lands and lots in the county of Cook and State of Illinois upon which remain due and unpaid the taxes and special assessments levied and assessed for the year 1899 and upon which remain due and unpaid the amounts for which said lands and lots had been previously forfeited to the State of Illinois and which remained unpaid on the first day of November A. D. 1899 and interest and printers' fees added to said amounts as required by law and upon which also remain due and unpaid back taxes of 1898 and prior years added embracing the delinquent taxes and special assessments together with the interest and printers' fees thereon if any contained and set forth in the collector's books with the warrant for the collection of the same attached thereto issued by the county clerk of said county for the year 1899 which now remain due and unpaid and showing the names of the owners thereof so far as known the proper description of the lands and lots the valuation on which the tax is extended the amounts of the consolidated and other taxes and special assessments for the year 1899 the amount for which said lands and lots had been previously forfeited to the State of Illinois with interest and printers' fees added the amount of the back taxes interest and other costs if any against each parcel of land or lot respectively and the due and unpaid taxes for the year 1899 bear interest from the first day of May 1900 at the rate of one per cent. per month until paid or forfeited parts or fractions of a month are reckoned as a month all of which taxes and special assessments so levied and assessed for said years and hereinafter set forth and enumerated and interest and printers' fees and other costs due thereon respectively S. B. Raymond, county treasurer and *ex officio* county collector of said county, has been unable to collect and which said list is this day reported to the county clerk of said county and duly filed.

Owner's name.	Description.							Valuation as equalized by State board of equalization.	Amount of consolidated and other taxes levied for year 1890.	Total tax.	Amount of interest under section 177, revenue law, to date of judgment.	Costs up to and including entry of judgment.	Total amount of judgment.
	Section.	Town.	Range.	Lot.	Sublot.	Lot.	Block.						
								Dollars.	*Dollars. Cents.*	*Dollars. Cents.*	*Dollars. Cents.*	*Cents.*	*Dollars. Cents.*
Canal trustees' subd'n of	7	39	14										
Assessors' division of part of lot 2 and all of						3 to 7	64						
Chicago Theo. Sem. E. 19.43 ft.					4	"	"	1197	86 60	86 60	2 60	18	89 38
Bickerdike add'n to Chicago	8	39	14										
Chicago Theo. Seminary						32 to 36	20	2066	149 46	149 46	4 48	28	154 22
Union Park add'n to Chicago: W. A. and N. E. Ellis						16	1						
" "						17	"						
" "						18	"	23988	1734 86	1734 86	52 05	72	1787 63
						19	"						
Circuit court partition in S. W. ¼	8	39	14										
Eastman's subd'n of part of						7 and 8							
Chicago Theo. Seminary					2	"		1183	85 59	85 59	2 57	18	88 34
" " " "					5	"							
" " " private S. and ady					5	"		1183	85 59	85 59	2 57	36	88 52
Ashland 2nd add'n to Chicago	18	39	14										
Assessors' division					12 to 16	9							
Chicago Theo. Seminary				4	"	"		589	42 63	42 63	1 28	18	44 09
School Section add'n to Chicago					3 & 4	26							
Cent. Steam Laundry Co.				6	"	"							
" " " "				7	"	"		8963	648 25	648 25	19 45	54	668 24
" " " "				8	"	"							

16 Canal trustees' subd'n of	7	39	14			10	46						
C. Theo. Seminary	E. ½					11	"		646	39 53	39 53	1 19	36	41 08
Subdivision of					5 and 6	3	50							
Chicago Theological S'y				Sublot 1	"	"	"							
				2	"	"	"		7586	548 67	548 67	16 46	72	565 85
				3	"	"	"							
				4	"	"	"							
Ashland 2nd addition to Chicago in	18	39	14		1	1 to 4	16		1382	106 71	107 71	3 02	18	103 91
J. H. Barton						9 & 10								
Bronson's add'n to Chicago														
Assessors' div'n of						"	"		8500	563 99	563 99	16 92	18	581 09
Theological Seminary					1									
James W. Scovelle's subd'n of W. ½ N. E. ¼	7	39	13				23							
Subdivision of						16	"		437	31 48	31 48	94	18	62 60
C. B. Scovelles						17	"		190	13 68	13 68	94	18	14 80
" "						19	"		100	13 68	13 68	41	18	14 80
" "						20	"		623	44 83	44 83	1 34	36	46 53
Chicago Theo. Seminary						21	"		190	13 68	13 68	41	18	14 27
" " "						23	"		464	33 40	33 40	1 00	18	34 58
J. W. Scovelle						24	"		190	13 68	13 68	41	18	14 27
Chicago Theo. Seminary						25	"		190	13 68	13 68	41	18	14 27
C. B. Scovelle						26	"							
" "														
Bradish and Misner add'n to Riverside in	24	39	12			19	16		19	1 29	1 29	04	18	1 51
Chicago Theo. Seminary						20	"		19	1 29	1 29	04	18	1 51
" " "														
Maywood, being a subd'n in	2, 11, 14	39	12											
A. B. Mead & Co.						23	206		54	3 23	3 23	10	18	3 51
" " "						24	"		54	3 23	3 23	10	18	3 51
" " "						25	"		54	3 23	3 23	10	18	3 51
" " "						26	"		54	3 23	3 23	10	18	3 51
" " "						27	"		55	3 23	3 23	10	18	3 51
E. 10 acs. S. 30 acs. W. ½ N. W. ¼	28	40	13						1000	61 05	61 05	1 83	28	63 16
Chicago Theo. Seminary (10 acres)														
Western add'n subd'n of W. ½ S. E. ¼	15	39	12			1	1		13	61	61	02	18	81
F. E. Ballard						2	"		10	48	48	01	18	67
" "						3	"		10	48	48	01	18	67
" "														
Chytrus add'n to Argyle in S. W. ¼	8	40	14											
Subdivision of lot 44 Brown's 2nd add'n to Argyle &							6							
G. W. Barnett						12	"		257	16 43	16 43	49	18	17 10

17 STATE OF ILLINOIS, } ss:
County of Cook, }

I, S. B. Raymond collector of the county of Cook do solemnly swear that the foregoing is a true and correct list of the delinquent lands and lots within the county of Cook upon which I have been unable to collect the taxes and special assessments interest and printers' fees charged thereon as required by law for the year or years therein set forth that said taxes remain due and unpaid as I verily believe.

S. B. RAYMOND,
Collector of Cook County, Illinois.

Subscribed and sworn to before me this 9th day of July A. D. 1900.

PHILIP KNOPF,
Clerk of the County Court of Cook County, Illinois.

18 UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
County of Cook, }

Pleas before the Honorable Orrin N. Carter, sole presiding judge of the county court of Cook county, in the State of Illinois, at a regular term of said county court of Cook county begun and holden at the court-house, in the city of Chicago, in said county and State, on the second Monday, being the nineth day, of July, in the year of our Lord one thousand nine hundred, and of the Independence of the United States of America the one hundred and twenty-fifth.

Court opened by proclamation.
Present thereat the Honorable Orrin N. Carter judge of the county court of Cook county Charles S. Deneen State's attorney Ernest J. Magerstadt sheriff of Cook county
Attest: PHILIP KNOPF,
Clerk of County Court of Cook County.

In the matter of the application of SAMUEL B. RAYMOND, county treasurer and *ex officio* collector of the revenue of county of Cook, in the State of Illinois, for judgment and order of sale on delinquent taxes and special assessment levied and assessed for the year 1899 and prior years.

And now to wit on this *day* eleventh day of July in the year of our Lord one thousand nine hundred the same being one of the days of the July term A. D. 1900 of this court again comes the said Samuel B. Raymond county treasurer and *ex officio* county collector of the revenue of Cook county by Julius A. Johnson county attor-
19 ney and moves the court for judgment and order of sale against the lands and lots contained in the foregoing list said list comprising volumes one (1) to ninety-three (93) inclusive and known as the Tax Judgment Sale Redemption and Forfeiture Record for the

amount of said delinquent taxes interest penalties and costs due and unpaid thereon for the year A. D. 1899 and prior years.

And it appearing to the court that due notice has been given of the intended application for a judgment and order of sale against said lands and lots and no sufficient defences having been made or cause shown except as to the property described in the objections on file why judgment should not be entered against said lands and lots for the amount of said delinquent taxes interest penalties and costs due and unpaid thereon for the year or years herein set forth.

Therefore it is considered by the court that judgment be and is hereby entered against the aforesaid tract or tracts or lots of land or parts of tracts or lots (as the case may be) except as to the property described in the objections on file in favour of the people of the State of Illinois for the sum annexed to each being the amount of taxes interest penalties and costs due severally thereon.

And it is ordered by the court that the said several tracts or lots of land except as to the properly described in the objections on file be sold as the law directs to satisfy the amount of taxes interest penalties and costs annexed to them severally.

ORRIN N. CARTER,
Judge of the County Court of Cook County.

20 STATE OF ILLINOIS, } ss:
County of Cook, }

I, Philip Knopf clerk of the county court in and for the county of Cook in the State aforesaid do hereby certify that the above and foregoing being volumes one to ninety-three inclusive and known as the Tax Judgment Redemption and Forfeiture Record is a true and correct record of the delinquent real estate in said county against which judgment and order of sale was duly entered in the county court of said county on the 11th day of July 1900 for the amount of the taxes special assessments interest and costs due severally thereon as therein set forth and that the judgment and order of court in relation thereto fully appears on said record.

In testimony whereof I have hereunto set my hand and affixed the seal of said county court at my office in the city of Chicago in said county this 6th day of August A. D. 1900.

PHILIP KNOPF,
Clerk of the County Court of Cook County, Illinois.

21 And heretofore to wit on the 11th day of July A. D. 1900 there were filed with the clerk of said court *a* certain objections in words and figures as follows to wit:

STATE OF ILLINOIS, } ss.
Cook County, }

In the County Court of Cook County, July Term, A. D. 1900.

SAMUEL B. RAYMOND, County Treasurer & *ex Officio* County Collector of Cook County,
vs.
THE BOARD OF DIRECTORS OF THE Chicago Theological Seminary, a Corporation, Impleaded, &c.
} Application for Judgment for Taxes.

Now come the Board of Directors of the Chicago Theological Seminary, a corporation organized under the laws of the State of Illinois, owners of and interested in the different tracts of land and lots respectively, set forth in the schedule hereto attached, by David Fales its attorney, and object to judgment against the said lots and tracts of land for any amount whatever for any taxes, for the following reasons:

First. Each and all of said tracts of land and lots are exempt and free from all taxation whatever.

Second. The taxes levied on said lots and each thereof are void.

Third. This court has no jurisdiction to enter judgment against said lots or either thereof, as the same and each thereof are exempt and free from all taxation.

Fourth. The county clerk of Cook county had no power to levy or extend any tax on any of said lots.

22 Fifth. That the State of Illinois in the year 1855, granted to this objector a charter, and by the provisions of section five of said charter, all property of every kind and description at any time owned belonging to or appertaining to this objector is and would be exempt from the payment of all taxes that after said charter was granted to this objector, the said charter was duly accepted by this objector; and since said acceptance, all the lands of this objector against which judgment is sought for taxes, was bought by this objector, and the same are now owned by it. That the general revenue act of the State of Illinois under which the said county treasurer is seeking to obtain judgment against the lands of this objector in this proceeding, impairs the obligation of said legislative contract between the State of Illinois and this objector arising from the said charter and is a violation of paragraph one, section ten, article one of the Constitution of the United States.

Sixth. That by clause five of the charter of this objector granted to it by the State of Illinois, all the property of every kind and description of this objector is exempt from all taxes of every kind and description, and that the general revenue act of the State of Illinois under which the said county treasurer is seeking to obtain judgment against the lands of this objector is an impairment of the obligation of the contract between the State of Illinois and this objector arising from the said charter and its acceptance by this objector; and the said general revenue act of the State of Illinois is a violation

of clause one, section ten article one, of the Constitution of the United States.

Seventh. That the plaintiff, The People of the State of Illinois, on the relation of the county treasurer and *ex officio* county collector of Cook county in and for the year 1884, in the county court of
23 Cook county, in the State of Illinois, at the July term thereof in the year 1884, filed application for judgment against sundry lands of this objectors, for the general taxes thereon for the year 1883, under the general revenue laws of the State of Illinois; that none of the lands of this objector against which said application for judgment for taxes was asked, were lands occupied at any time by this objector for the buildings of its institution or for the school conducted by it, and were not at any time directly or immediately subjected to use by the school carried on by said objector; that this objector filed its appearance in the county court of Cook county upon said application, and filed its objections therein to judgment being rendered against any of its said lands for the sole reason that by the provisions of its charter granted to it by the State of Illinois, all its lands were exempt from taxation; that the said county court of Cook county at the said July term 1884, proceeded to a hearing of the objections to judgment filed by said objector, and that the sole and only fact and ground of defense heard and considered by the said county court was the objection that by the term- of said section five of the charter of said objector, the land of this objector described in the said objections, was free and exempt from taxation, and thereupon the said county court of Cook county at said July term 1884, rendered judgment sustaining the objections of said objector, and refused the application of said plaintiff for judgment for taxes against the said lands of this objector described in its objections which said judgment of said county court of Cook county remains in full force and unreversed and this the objector is ready to verify and that thereby the said plaintiff is barred and estopped to make application for judgment for taxes of 1899 in the present application against the lands of this objector described in schedule attached to its objections herewith filed.

Eight-. The county treasurer and *ex officio* county collector of Cook county, in the year 1884 in the county court of Cook
24 county in the State of Illinois, at the July term thereof in the year 1884, filed application for judgment against sundry lands of this objector, for the general taxes thereon for the year 1883, under the general revenue laws of the State of Illinois; that none of the lands of this objector against which said application for judgment for taxes was asked were lands occupied at any time by this objector for the buildings of its institution or for the school conducted by it, and were not at any time directly or immediately subjected to use by the school carried on by said objector; that this objector filed its appearance in the county court of Cook county upon said application, and filed its objections therein to judgment being rendered against any of its said lands, for the sole reason that by the provisions of its charter granted to it by the State of Illinois, all its lands were exempt from taxation, that the said county court

of Cook county at the said July term 1884, proceeded to a hearing of the objections to judgment filed by said objector, and that the sole and only fact and ground of defense heard and considered by the said county court was the objection that by the terms of said section five of the charter of said objector the land of this objector described in the said objections, was free and exempt from taxation and thereupon the said county court of Cook county at said July term, 1884, rendered judgment sustaining the objections of said objector, and refused the application of said plaintiff for judgment for taxes against the said lands of this objector described in its objections which said judgment of said county court of Cook county remains in full force and unreversed, and this the objector is ready to verify and that thereby the said plaintiff is barred and estopped to make application for judgment for taxes of 1899 in the present application, against the lands of this objector described in schedule attached to its objections herewith filed.

Nineth. That the plaintiff The People of the State of
25 Illinois, on the relation of the county treasurer and *ex officio* county collector of Cook county in and for the years 1874 to 1884 each, and 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, respectively in the county court of Cook county in the State of Illinois, at the July term thereof in each of the years 1874 to 1884 each, and 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, filed application for judgment against the said lands and sundry other lands of this objector, for the general taxes thereon for the years 1873 to 1883 each, and 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, respectively under the general revenue laws of the State of Illinois; that none of the lands of this objector against which said application for judgment for taxes was asked, were lands occupied at any time by this objector for the buildings of its institution or for the school conducted by it, and were not at any time directly or immediately subjected to use by the school carried on by said objector; that this objector filed its appearance in the county court of Cook county upon each of said applications and filed its objections therein to judgment being rendered against any of its said lands, for the sole reason that by the provisions of its charter granted to it by the State of Illinois, all its lands were exempt from taxation; that the said county court of Cook county at the said July term- 1874 to 1884 each, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, proceeded to a hearing of the objections to judgment filed by said objector, and that the sole and only facts and ground of defense heard and considered by the said county court was the objection that by the terms of said section five of the charter of said objector, the land of this objector described in the said objections was free and exempt from taxation and thereupon the said county court of Cook county at each of said July terms 1874 to 1884 each,
26 and 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, respectively, rendered judgment sustaining the objections of said objector, and refused the application of said plaintiff for judgement for taxes against the said lands of this ob-

jector described in its objections, which said judgments of said county court of Cook county remains in full force and unreversed, and this the objector is ready to verify, and that thereby the said plaintiff is barred and estopped to make application for judgment for taxes of 1899 in the present application, against the lands of this objector described in schedule attached to its objections herewith filed.

Tenth. That the county treasurer and *ex officio* county collector of Cook county in and for the years 1874 to 1884 each, and 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, respectively in the county court of Cook county in the State of Illinois at the July term thereof in each of the year- 1874 to 1884 each, and 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, filed application for judgment against the said lands and sundry other lands of this objector, for the general taxes thereon for the year- 1873 to 1883 each, and 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, respectively under the general revenue laws of the State of Illinois, that none of the lands of this objector against which said application for judgment for taxes was asked were lands occupied at any time by this objector for the buildings of its institution or for the school conducted by it, and were not at any time directly or immediately subjected to use by the school carried on by said objector; that this objector filed its appearance in the county court of Cook county upon each of said applications, and filed its objections therein to judgment being rendered against any of its said lands, for the sole reason that by the provisions of its charter granted to it by the State of Illinois, all its lands were exempt from taxation; that the said county court of Cook county
27 at the said July term- 1874 to 1884 each, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, proceeded to a hearing of the objections to judgment filed by said objector, and that the sole and only fact and ground of defense heard and considered by the said county court, was the objection that — the terms of said sections five of the charter of said objector, the land of this objector described in the said objections, was free and exempt from taxation, and thereupon the said county court of Cook county at each of said July terms 1874 to 1884 each, and 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, and 1898, respectively, rendered judgment sustaining the objections of said objector, and refused the application of said plaintiff for judgment for taxes against the said lands of this objector described in its objections, which said judgments of said county court of Cook county remains in full force and unreversed, and this the objector is ready to verify, and that thereby the said plaintiff is barred and estopped to make application for judgment for taxes of 1899 in the present application, against the lands of this objector described in schedule attached to its objections herewith filed.

Wherefore, this objector prays judgment if said plaintiff- ought to have their aforesaid action against this objector.

Eleventh. That by the charter of this objector granted to it by

the State of Illinois, all property of this objector is free and exempt from all taxes of every kind and description and that this application for judgment against the lands of this objector is an impairment of the obligation of the contract between the State of Illinois and this objector, and is a violation of the first clause of section ten of article one of the Constitution of the United States, and is also a violation of section one of article fourteen, of the Constitution of the United States.

THE BOARD OF DIRECTORS OF THE
CHICAGO THEOLOGICAL SEMINARY.
By its att'y, DAVID FALES.

28 SCHEDULE "A."

The Board of Directors of the Chicago Theological Seminary — owners of the following property:

1.

Lot ten (10) and east ½ of lot eleven (11), in block forty-six (46) in canal trustees' subdivision of section seven (7) township 39, north, range 14, east of the 3rd P. M.

2.

Lots 5 and 6, in block 3, in Page and Woods' subdivision of block 50, in canal trustees' subdivision — section 7, township 39, north, range 14, east of 3rd P. M. being also lots 1, 2, 3, and 4, in sublots 5 and 6, in lots 3, in block 50, canal trustees' subdivision in section 7, township 39, north, range 14, east of 3rd P. M.

3.

Also sublot 1, of a subdivision by E. J. Lewis of lots 1, 2, 3, and 4, in block 16, in Ashland Second addition to Chicago.

4.

Also sublot 1, in assessors' subdivision of lots 9 and 10, in Bronson's addition to Chicago, beginning at northwest corner of lot 9 running south on west line of said lot 9, 81.70 feet, thence east 156 feet to east line of lot 10; thence north on said east line 81.70 feet more or less to the northeast corner of said lot 10; thence west to place of beginning.

5.

Also lots 16, 17, 19, 20, 21, 23, 24, 25, and 26, in block 23, in J. W. Scoville's subdivision of section 7, township 39, north, range 13 east of 3rd P. M. (being J. James W. Scoville's subdivision of the west ½ of the northeast ¼ of said section 7).

6.

Also lots 23, 24, 25, 26, and 27, in block 206, in Maywood, in section- 2, 11 and 14 township 39, north, range 12, east of 3rd P. M.

7.

Also the east ten (10) acres of the south 30 acres of the
29 west $\frac{1}{2}$ of the northwest $\frac{1}{4}$ of section 28, township 40 north, range 13, east of 3rd P. M.

8.

Lots 1, 2, and 3, in block 1, in Western addition of section 15 township 39, north, range 12 east of 3rd P. M.

9.

Lot 12, in block 6, in Chytraus addition to Argyle, in section 8, township 40, north, range 14, east of the 3rd P. M. and subdivision of lot 44 Brown's Second addition to Argyle.

10.

Lots 19 and 20, in block 16, in Bradish and Wizner's addition, in section 24, township 39, north, range 12 east of the 3rd P. M.

11.

East 19.43 feet sublot four (4) assessors' division of lot two (2) and lots three (3) to seven (7) in block sixty-four (64), in the canal trustees' subdivision of section 7 in township 39, north, range 14, east of 3rd P. M.

12.

Lots 32, 33, 34, 35 and 36, in block 20, in Bickerdike's addition to Chicago.

13.

Also lots 16, 17, 18, and 19, in block 1, in Union Park addition to Chicago.

14.

Also lots 2 and 5, in Eastman's subdivision of part of lots 7 and 8 in circuit court partition of the southwest $\frac{1}{4}$ of section 8, township 39, north, range 14, east of 3rd P. M.

Also private alley south and adjoining the said sublot 5, in said Eastman's subdivision, described as aforesaid.

15.

The south 14 feet and 3 inches of lot 14, and the north 5 feet and 9 inches of lot 15 in block 9, Ashland Second addition to
30 Chicago, being sublot 4 in lots 12 to 16 in block 9 in section 18 township 39, north, range 14, east of 3rd P. M (Ashland Second addition).

16.

Also sublots 6, 7, and 8, in lots 3 and 4, in block 26, in School Section addition to Chicago, in section 16 township 39, north, range 14, east of 3rd P. M. said sublots 6, 7, and 8 being in Collins' subdivision of lots 3 and 4, in block 26, in School Section addition to Chicago.

31 And afterwards to wit, on the 24th day of October A. D. 1900 the following among other proceedings were had by and before said court and entered of record to wit:

In the matter of the application of the county treasurer and *ex officio* collector of the county of Cook, in the State of Illinois, for judgment of sale for the delinquent taxes and special assessments levied and assessed for the year 1899 and previous thereto. 166, general.

This day come the county treasurer and *ex officio* collector of Cook county, Illinois by his attorney and The Chicago Theological Seminary objector herein by its attorney and said cause coming on to be heard upon the foregoing application and the objector thereto after a hearing it is ordered by the court that said objections be and are hereby overruled. And thereupon it is considered by the court that judgment be and is hereby entered against the property of said objector in favour of the People of the State of Illinois for the amount of taxes interest penalties and costs due thereon.

It is further ordered that the property of said objector be sold as the law directs to satisfy the amount of taxes interest penalties and costs due thereon Whereupon the said objector now here duly excepts and prays and appeal to the supreme court of the State of Illinois, which is allowed upon said objector filing herein within 30 days from this date bill of exceptions and appeal bond in the penal sum of $500.00 with sureties thereon to be approved by the court.

32 And afterwards to wit on the 1st day of November A. D. 1900 the following among other proceedings were had by and before said court and entered of record to wit:

In the matter of the application of the county treasurer and *ex officio* collector of the county of Cook, in the State of Illinois, for judgment of sale for the delinquent taxes and special assessments levied and assessed for the year 1899 and previous thereto. 166, general.

It appearing to the court, that the said objector for the Board of Directors of the Chicago Theological Seminary, has made deposit with the county treasurer of Cook county, Illinois the amount of taxes and costs on the real estate described in its said objections, it is therefore ordered, that the appeal bond of the said objector this day filed, is hereby approved and appeal allowed to the said objector to the supreme court of the State of Illinois.

33 *Bond No. 166, General.*

And afterwards to wit on the 1st day of November A. D. 1900, there was filed with the clerk of said court a certain bond in words and figures as follows to wit:

Know all men by these presents, that we, the Board of Directors of the Chicago Theological Seminary, a corporation organized under the laws of Illinois, and Eliphalet W. Blatchford of the county of Cook and State of Illinois, are held and firmly bound unto the People of the State of Illinois, in the penal sum of five hundred (500) dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs executors, and administrators jointly, severally and firmly, by these presents.

Witness our hands and seals, this thirty-first (31st) day of October, A. D. 1900.

The condition of the above obligation is such, that whereas, the People of the State of Illinois did, on the twenty-fourth (24th) day of October, A. D. 1900, in the county court of Cook county, in the State of aforesaid, and of the October term thereof, A. D. 1900, recover a judgment against the following-described real estate on the application of Samuel B. Raymond county treasurer and *ex officio* county collector of Cook county for judgment for delinquent taxes for the year 1899, to wit.

Lot ten (10) and east ½ of lot eleven (11) block forty-six (46) in canal trustees' subdivision of section seven (7) township 39, north, range 14, east of the 3rd P. M. for the sum of $42.26

Lots 5 and 6, in block 3, in Page and Woods' subdivision of block 50, in canal trustees' subdivision, section 7, township 39, north, range 14, east of 3rd P. M. being also lots 1, 2, 3, and 4, *in* sublots 5 and 6, in lots 3, in block 50, canal trustees' subdivision in section 7, township 39, north range 14, east of 3rd P. M. for the sum of $582.31.

Also sublot 1, of a subdivision by E. J. Lewis of lots 1, 2, 3,
34 and 4 in block 16 in Ashland Second addition to Chicago, in section- 18–39–14, for the sum of $106.93.

Also sublot 1, in assessors' subdivision of lots 9 and 10, in Bronson's addition to Chicago. Beginning at northwest corner of lot 9, running south on west line of said lot 9, 81.70 feet; thence east 156 feet to the east line of lot 10; thence north on said east line 81.70 feet more or less to the northeast corner of said lot 10; thence west to place of beginning for the sum of $598.01.

Also lots 16, 17, 19, 20, 21, 23, 24, 25, and 26, in block 23, in J. W. Scoville's subdivision of section 7, township 39, north, range 13 east of 3rd P. M. (being in James W. Scoville's subdivision of the west ½ of the northeast ¼ of said section 7) for the sum of $190.41.

Also lots 23, 24, 25, 26 and 27 in block 206 in Maywood, in section- 2, 11, and 14, township 39, north, range 12, east of 3rd P. M., for the sum of $18.02.

Also the east ten (10) acres of the south 30 acres of the west ½ of the northwest ¼ of section 28 township 40 north range 13 east of 3rd P. M. for the sum of $64.99.

Lots 1, 2, and 3 in block 1, in Western addition of section 15, township 39, north, range 12, east of 3rd P. M. for the sum of $2.20.

Lot 12, in block 6, in Chytraus' addition to Argyle, in section 8, township 40, north, range 14, east of the 3rd P. M. and subdivis-

ion of lot 44, Brown's Second addition to Argyle, for the sum of $17.59.

Lots 19 and 20, in block 16 in Bradish and Wizner's addition to Riverside in section 24 township 39, north, range 12, east of
35 the 3rd P. M. for the sum of $3.09.

East 19.43 feet sublot four (4) assessors' division of lot two (2) and lots three (3) to seven (7) in block sixty-four (64) in the canal trustees' subdivision of section 7, in township 39, north, range 14, east of 3rd P. M. for the sum of $91.97.

Lots 32, 33, 34, 35, and 36, in block 20, in Bickerdike's addition to Chicago, for the sum of $159.32.

Also lots 16, 17, 18, and 19, in block 1, in Union Park addition to Chicago, for the sum of $1839.67.

Also lots 2 and 5, in Eastman's subdivision of part of lots 7 and 8 in circuit court partition of the southwest ¼ of section 8, township 39, north range 14 east of 3rd P. M. with private alley south and adjoining the said sublot 5 in said Eastman's subdivision described as aforesaid, for the sum of $181.81.

The south 14 feet and 3 inches of lot 14, and the north 5 feet and 9 inches of lot 15 in block 9, in Ashland Second addition to Chicago being sublot 4 in lots 12 to 16 in block 9, in section 18, township 39, north, range 14, east of 3rd P. M. (Ashland Second addition) for the sum of $45.36.

Also sublots 6, 7, and 8, in lots 3 and 4, in block 26, in School Section addition to Chicago, in section 16, township 39, north, range 14, east of 3rd P. M. Said sublots 6, 7 and 8, being in Collins' subdivision of lots 3 and 4, in block 26, in School Section addition to Chicago for the sum of six hundred eighty-seven dollars and sixty-eight cents ($687.68) from which said judgment of the said county court of Cook county, the said The Board of Directors of the Chicago Theological Seminary have prayed for, and obtained an ap-
36 peal to the supreme court of Illinois, & has deposited with the county treasurer of Cook county, *were* the amount of said taxes & costs & interest in full.

Now, therefore, if the said The Board of Directors of the Chicago Theological Seminary shall duly prosecute its said appeal with effect, and moreover pay the amount of the judgment for costs rendered and to be rendered against it in case the said judgment shall be affirmed in said supreme court and shall pay the amount of taxes finally adjudged against said real estate, then the above obligation to be void, otherwise to remain in full force and virtue.

THE BOARD OF DIRECTORS OF THE
CHICAGO THEOLOGICAL SEMINARY,
[SEAL.] By E. W. BLATCHFORD, *President.*
GEORGE S. F. SAVAGE, *Secretary.*
ELIPHALET W. BLATCHFORD. [SEAL.]

(50 stamp 50.)

O K.
J. A. JOHNSON, *Co. Att'y.*

O K.
O. A. C.

37 And afterwards to wit on the 17th day of November A. D. 1900 there was filed with the clerk of said court a certain bill of exceptions in words and figures as follows to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court of Cook County.

In the matter of the application of SAMUEL B. RAYMOND, county treasurer and *ex officio* collector, etc., of Cook county, Illinois, for judgment against delinquent lands, etc., for general taxes levied for the year 1899.

THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* SAMUEL B. Raymond, County Treasurer and *ex Officio* Collector of Cook County, &c.,

vs.

THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL SEMINARY.

In the matter of the objection of the Board of Directors of the Chicago Theological Seminary, a corporation.

It is hereby stipulated that the bill of exceptions filed in the above-entitled cause, may be incorporated in the transcript of the record to the Supreme Court, in lieu of a copy thereof.

JULIUS A. JOHNSON,
Attorney for Applicant.
DAVID FALES,
Attorney for Objector.

No. 166. Application of S. B. Raymond, Co. treas. & *ex of.* Co. collector, &c. *v.* Board of Directors of the Chicago Theo. Seminary. Filed Nov. 17, 1900 Philip Knopf clerk.

38 STATE OF ILLINOIS, } ss:
Cook County, }

In the County Court of Cook County, October Term, A. D. 1900.

In the Matter of the Application of SAMUEL B. RAYMOND, County Treasurer and *ex Officio* County Collector of Cook County, for Judgment for Delinquent Taxes for the Year 1899,

vs.

THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL SEMINARY, a Corporation, Impleaded, &c.

Objections of the Board of Directors of the Chicago Theological Seminary.

Bill of Exceptions.

Be it remembered, that heretofore, on, to wit, Wednesday, October twenty-fourth (24th), 1900, before the Honorable R. W. S. Wheat-

ley judge of the county court of Perry county, Illinois, sitting as the said judge of said county court of Cook county, the objections of the Board of Directors of the Chicago Theological Seminary, a corporation, came on for hearing.

There appeared for the said objector, David Fales and Gwynn Garnett; for the said applicant, Julius A. Johnson, William F. Struckmann and Frank Shepard, and thereupon it was stipulated and conceded in open court that the title to all the property in question described in objections of defendant objector on the first day of April, 1899, was owned by objector and is still owned by it; that some of the lots are vacant and some are improved and rented to tenants of objector; that all the rentals and income of all the property described in the objections are used for the object contemplated in the charter granted to objector by the State of Illinois, and that all of said parcels and lots were bought by the objector or given to
39 the objector for the promotion of the objects mentioned in the charter; that the objector is the owner of other lots upon which it has constructed buildings wherein is given instruction by professors and instructors to carry out the object designated in its charter, and that the lots occupied by the buildings where said instruction is given are not taxed; that since the grant to it by the State of Illinois of its charter the objector corporation has accepted the same and has expended in the erection and purchase of buildings upon the real estate designated in the objections and upon other lots owned by objector corporation *to* an amount exceeding $200,000, and that a large number of students have been and are being instructed by said corporation according to its charter.

The applicant introduced in evidence the collector's warrants for general taxes for 1899; also the county collector's sworn report of delinquent lands and lots delinquent for the general taxes of 1899, so far as the same relate to objector's property; also the certificate of publication of notice of application for judgment for such taxes, all of which were read in evidence, and thereupon, it was stipulated and agreed that said warrant and report show a total tax and cost against objector's property of $4631.62 in aggregate which remain unpaid.

It was further stipulated that the county treasurer and *ex officio* county collector had published all necessary notices to give the court jurisdiction of the subject-matter and the parties. It was further agreed that said warrants, reports and certificate of publication need not be herein set out in full, but that the foregoing stipulation of facts represent the facts as they appear from said evidence.

40 The objector to maintain the issues introduced read in evidence its charter entitled "An act to incorporate the Chicago Theological Seminary" a copy of which certified by the secretary of State of Illinois, is as follows:—

"An act to incorporate the Chicago Theological Seminary.

SEC. 1. Be it enacted by the people of the State of Illinois represented in the General Assembly, That Stephen Peet, William Carter, Flavel Bascom, M. A. Jewett, Geo. W. Parkins, Philo Carpenter, Truman Post, John C. Holbrook, Horace Hobart, John J. Miter

Hiram Foote, Joseph Johnston, Harvey D. Kitchel, Alden B. Robbins Adam S. Kedzie, L. Smith Hobart, Nathan H. Eggleston, Solomon L. Whithey, Jesse Guernsey, Joseph E. Beebe, Chas. W. Camp John G. Foote, Richard Hall, Geo. S. F. Savage and their successors be and they hereby are created a body politic and corporate to be styled "The Board of Directors of the Chicago Theological Seminary," and by that name and style to remain, and have perpetual succession with full power to sue and be sued plead and be impleaded to acquire, hold and convey property real and personal, to have and use a common seal, to alter and renew the same at pleasure—to make and alter a constitution and by-laws for the conducting and government of said institution, and fully to do whatever may be necessary to carry out the object of this act of corporation.

SEC. 2. That the seminary shall be located in or near the city of Chicago. The object shall be to furnish instruction and the means of education to young men preparing for the gospel ministry and the institution shall be equally open to all denominations of Christians for this purpose.

SEC. 3. That the board of directors shall consist of twenty-
41 four members, nine of whom shall constitute a quorum for the transaction of business. The directors shall hereafter be elected in accordance with the provisions of the constitution under which they act, and shall hold their office until their successors are appointed.

SEC. 4. That the board of directors shall have power to appoint an executive committee and such agents, as they may deem necessary, and such officers, professors, and teachers as the government and instruction of the seminary may require, and prescribe their duties, to remove any of them for sufficient reasons, and to prescribe and direct the course of studies to be pursued in the institution, also to confer such degrees as are consistent with the object of the institution.

SEC. 5. That the property of whatever kind or description belonging or appertaining to said seminary shall be forever free and exempt from all taxation for all purposes whatsoever.

SEC. 6. This act to take effect and be in force from and after its passage, and it shall be deemed a public act and shall be construed liberally in all courts for the purpose therein expressed.

THOMAS I. TURNER,
Speaker of the House of Rep.
G. KOERNER,
Speaker of Senate.

Approved Feb. 15, 1899.
J. A. MATTESON.

42 UNITED STATES OF AMERICA, } ss:
State of Illinois, }

OFFICE OF THE SECRETARY OF STATE.

I, James A. Rose, secretary of state of the State of Illinois, do hereby certify that the foregoing is a true copy of an act entitled "An act to incorporate the Chicago Theological Seminary" approved February 15th 1855, the original of which is now on file in my office.

In witness whereof, I hereto set my hand and affix the great seal of State, at the city of Springfield, this *eighth* day of *June* A. D. *1900.*

[Seal of the State of Illinois, Aug. 26th, 1818.]

JAMES A. ROSE,
Secretary of State."

Ten-cents inter. revenue documentary stamp affixed fully cancelled. 6/8/1900. J. A. R.

It was thereupon stipulated and conceded in open court, that at the July term, 1888, the county treasurer and *ex officio* county collector of Cook county, made application in the county court of Cook county, Illinois, for judgment against the undivided nine-tenths of lot 7, Seipp's subdivision in section 25, township 38, north, range 14, east of 3rd P. M., and other delinquent land in the county of Cook for the general taxes levied respectively thereon for the year 1887.

Thereupon the objector offered and read in evidence the objection filed by the Board of Directors of the Chicago Theological Seminary in the said county court of Cook county, Illinois, to said ap-
43 plication for judgment in words and figures as follows:—

"In the County Court of Cook County, July Term, 1888.

In the matter of the application of GEORGE R. DAVIS for judgment for taxes, &c., of the year 1887.

The Board of Directors of the Chicago Theological Seminary owners of an undivided nine-tenths $\frac{9}{10}$ lot seven Seip's subdivision in section 25 twenty-five town thirty-eight north range fourteen east &c. object to judgment being rendered against said tract for the reason that said lot is exempt from taxes

THE BOARD OF DIRECTORS OF
THE CHICAGO THEOLOGICAL
SEMINARY,
By its att'y, DAVID FALES."

It was thereupon stipulated and conceded, that at the September term, 1888, of the county court of Cook county, Illinois, the said county court of Cook county, Illinois, entered judgment sustaining the said objection of the Board of Directors of the Chicago Theological Seminary, and refused the application of said county treasurer and county collector for judgment for the said general taxes of

1887, upon the undivided nine-tenths of lot 7, Seip's subdivision described in said objection.

It was thereupon stipulated and conceded, that at the July term, 1889, of the county court of Cook county, the county treasurer and *ex officio* county collector of Cook county, made application in the said county court of Cook county, Illinois, for judgment against lot 9, block 2, in C. W. Rigdon's resubdivision of section 27, township 39, north, range 14, east of 3rd P. M., and other delinquent
44 lands in the county of Cook for the general taxes levied respectively thereon for the year 1888.

Thereupon the objector offered and read in evidence, the objection of the Board of Directors of the Chicago Theological Seminary, filed in the said county court of Cook county, Illinois, to said application for judgment, July 10th, 1889, in words and figures as follows:—

"In the County Court of Cook County, July Term, 1889.

In the matter of the application of GEORGE R. DAVIS, county collector of Cook county, for judgment for delinquent taxes and special assessments.

Now come the Board of Directors of the Chicago Theological Seminary &c. owners of & interested — the different lots tracts & parcels of land described in Schedule A hereto attached & object to judgment being rendered against said tracts & lots for the taxes and special assessments thereon respectively for the following reasons.

1st. The land owned by said Board of Directors of the Chicago Theological Seminary *are* exempt from taxation by the charter of said seminary and is not subject to taxation.

By their attorney, DAVID FALES.

SCHEDULE A.

Lot 9 block 2 in C. W. Rigdon's resubdivision of section 27, township 39 north range 14 east of 3rd P. M. owned by the Board of Directors of the Chicago Theological Seminary.

Filed July 10 1889.

HENRY WULFF, *Clerk.*"

It was thereupon stipulated and conceded that at the July
45 term 1889 of the county court of Cook county, Illinois, the said county court of Cook county, Illinois, rendered judgment sustaining the said objection of the Board of Directors of the Chicago Theological Seminary, filed July 10 1889 and refused the application of said county collector for judgment for the said general taxes of 1888, upon the said lot 9, block 2, in C. W. Rigdon's resubdivision of section 27, township 39 north, range 14 east of 3rd P. M. described in said objection.

It was thereupon stipulated and conceded, that at the July term 1891, of the county court of Cook county, Illinois, the county treasurer and *ex officio* county collector of Cook county, made application in the county court of Cook county, Illinois, for judgment for the

general taxes of the year 1890, against the following property.—Sublot one (1), in the assessors' division of lots nine (9) and ten (10) in Bronson's addition to Chicago.

Sublot one (1) and the east six (6) feet of sublot two (2) lot nine (9) block sixty-four (64) in the canal trustees' subdivision of section seven (7) township thirty-nine (39) north range fourteen (14) east of the third (3rd) principal meridian.

Lots eight (8) nine (9) thirteen (13) fourteen (14) twenty-one (21) twenty-two (22), thirty-five (35) thirty-six (36) and forty-five (45) in the subdivision of the south four (4) acres of the north sixteen (16) acres east of railroad of the northeast quarter (N. E. ¼) of the northeast quarter (N. E. ¼) of section nine (9) township thirty-eight (38) north range 14, east of the third (3rd) principal meridian.

Lots 14 to 16 both inclusive, lots 17, 18 to 21 both inclusive in the resubdivision of block 41, in Carpenter's addition to the
46 city of Chicago.

Said tract first above described being more particularly described as follows. All that part of lots nine (9) and ten (10) in Bronson's addition to Chicago, bounded as follows. Beginning at the northwest corner of lot nine (9) thence running *thence* south on the west line of said lot nine (9) in figures 81.70 feet thence east parallel with north line of lots nine (9) and ten (10) in figures 150 feet, to the east line of lot ten (10) thence north on the east line 81.70 feet to the northeast corner of lot ten (10) thence west on north line of lots nine (9) and ten (10) to place of beginning, and other delinquent lands for general taxes levied for year 1900.

Thereupon the objector offered and read in evidence the objection of the Board of Directors of the Chicago Theological Seminary, filed July 10th 1891, in the said county of Cook *county*, Illinois, to said application for judgment, said objection being in words and figures as follows:

"STATE OF ILLINOIS, } ss:
Cook County, }

In the County Court of Cook County, July Term, A. D. 1891.

In the matter of the application of CHARLES KERN, county collector of Cook county, for judgment for taxes and special assessments against sundry lands in Cook county.

The Board of Directors of the Chicago Theological Seminary, owners of the property set out and described in the schedule hereto attached, and made a part hereof, and marked Exhibit 'A'
47 object to judgment being rendered against the said lots, pieces and parcels of ground, or any or either of them, for the following reasons:—

First. That each and all of said tracts and lots are exempt from taxation, and all such taxes and the levy thereof are null and void

these objectors therefore ask that judgment against said lots, pieces and parcels of land be refused.

DAVID FALES,
Att'y for the Board of Directors of the Chicago Theological Seminary.

EXHIBIT "A."

Sublot one (1) in the assessors' division of lots nine (9) and ten (10) in Bronzon's addition to Chicago.

Sublot one (1) and the east six (6) feet of sublot two (2) lot nine (9) block sixty-four (64) in the canal trustees' subdivision of section seven (7) township thirty-nine (39) north range fourteen (14) east of the third (3rd) principal meridian.

Lots eight (8) nine (9) thirteen (13) fourteen (14) twenty-one (21) twenty-two (22) thirty-five (35) thirty-six (36) and forty-five (45) in the subdivision of the south four (4) acres of the north sixteen (16) acres east of railroad, of the northeast quarter (N. E. ¼) of the northeast quarter (N. E. ¼) of section nine (9) township thirty-eight (38) north, range fourteen (14) east of the third (3rd) principal meridian.

Lots fourteen (14) to sixteen (16) both inclusive, lots seventeen (17) lots eighteen (18) to twenty-one (21) both inclusive in the resubdivision of block forty-one (41) in Carpenter's addition to the city of Chicago.

48 Said tract first above described being more particularly described as follows. All that part of lots nine (9) and ten (10) in Bronzon's addition to Chicago, bounded as follows. Beginning at the northwest corner of lot nine (9) thence running *thence* south on the west line of said lot nine (9) in figures 81.70 feet; thence east parallel with north line of lots nine (9) and ten (10) in figures 150 feet, to the east line of lot ten (10) thence north on the east line 81.70 feet to the northeast corner of lot ten (10); thence west on north line of lots nine (9) and ten (10) to place of beginning.

Filed July 10th 1891.

HENRY WULFF, *Clerk.*"

It was thereupon stipulated and conceded, that at the July term 1891, of the county court of Cook county, Illinois, the said county court of Cook county, Illinois, rendered judgment sustaining the objections of the Board of Directors of the Chicago Theological Seminary, filed July 10th 1891, and refused the application of the said county collector of Cook county, for judgment for the said general taxes of 1890, upon the said lots described in said objection, namely:—

Sublot 1, in the assessors' division of lots 9 and 10 in Bronzon's addition to Chicago.

Sublot 1, and the east 6 feet of sublot 2.

Lot 9, block 64 in the canal trustees' subdivision, of section 7, 39 north range 14, east of the 3rd P. M.

Lots 8, 9, 13, 14, 21, 22, 35, 36, 45, in the subdivision of the south

4 acres of the north 16 acres east of railroad, of the northeast quarter of the northeast quarter of section 9, 39, north range 14, east of the 3rd P. M.

Lots 14 to 16, both inclusive, lots 17, 18, to 21, both inclu-
49 sive, in the resubdivision of block 41, in Carpenter's addition to the city of Chicago.

Said tract first above described being more particularly described as follows. All that part of lots 9 and 10 in Bronzon's addition to Chicago, bounded as follows. Beginning at the northwest corner of lot 9, thence running *thence* south on the west line of said lot 9, in figures 81.70 feet; thence east parallel with north line of lots 9 and 10, in figures 150 feet, to the east line of lot 10 thence north on the east line 81.70 feet to the northeast corner of lot 10; thence west on north line of lots 9 and 10 to place of beginning.

It was thereupon stipulated and conceded that at the July term 1892, in the county court of Cook county, Illinois, the county treasurer and *ex officio* county collector of Cook county, made application for judgment against lot two (2) in block eighteen (18) original town of Chicago; and lots one (1), two (2), ten (10) to sixteen (16) both inclusive, and north thirty (30) feet of lot four (4), in block twenty-eight (28) in Ridgeland, Cook county, Illinois, and other delinquent lands in the county of Cook, for the general taxes levied for the year 1891.

Thereupon the objector offered in evidence the objection filed by the Board of Directors of the Chicago Theological Seminary, July 12th, 1892, in the said county court of Cook county, Illinois, to said application for judgment, such objection being in words and figures as follows:—

"In the County Court, Cook County, July Term, 1892.

50 STATE OF ILLINOIS, } ss:
Cook County, }

In the matter of the application of CHARLES KERN, county collector of Cook county, for judgment for delinquent taxes and special assessments, &c.

The Board of Directors of the Chicago Theological Seminary, a corporation, &c., by David Fales, its attorney, owner of the following property:—

Lot two (2) in block eighteen (18) in the original town of Chicago, Cook county, Illinois.

Also lots one (1), two (2) ten (10) to sixteen (16) both inclusive, and the north thirty feet of lot four (4) in block twenty-eight (28) in the village of Ridgeland, being a subdivision, in sections seven (7) and eight (8) township thirty-nine (39) north, range thirteen (13) east of the third (3rd) principal meridian, Cook county, Illinois, objects to judgment being rendered against said lots, or any part thereof, because it says, that the same and each thereof, are exempt from all taxes by its charter.

Wherefore, it asks that judgment be refused against said lots and each thereof.

DAVID FALES,
Att'y for the Board of Directors of the Chicago Theological Seminary.

Filed July 12 1892.

HENRY WULFF, *Clerk.*"

It was thereupon stipulated and conceded that at the July term 1892 of the county court of Cook county, Illinois, the said county court of Cook county rendered judgment sustaining the said objection of the Board of Directors of the Chicago Theological Seminary, filed July 12th, 1892, and refused the said application of the
51 said county treasurer and *ex officio* county collector of Cook county, for judgment for the said general taxes of 1891, on the land described in said objection, namely.

Lot two (2) in block eighteen (18) original town of Chicago; and lots one (1) two (2), ten (10) to sixteen (16) and north thirty (30) feet of lot four (4), in block twenty-eight (28) in Ridgeland.

It was thereupon stipulated and conceded, that at the July term, 1879, of the county court of Cook county, Illinois, the county treasurer and *ex officio* county collector made application in said county court for judgment against lots 23, 24, and 25, in block 1, in Weage and Hyde's subdivision of the N. W. ¼ of the S. E. ¼ of section 20, town 40, north, range 14, east of the 3rd P. M. and other delinquent lands, in the county of Cook, for the general taxes levied for the year 1878. That thereupon the Board of Directors of the Chicago Theological Seminary at the said July term, 1879, filed its objections in writing to said application for judgment against lots 23, 24 and 25, in block 1, in Weage and Hyde's subdivision, stating that it was the owner of said lots and objected to judgment being rendered against the said lots for the following reason in writing. "That each and all of said tracts and lots are exempt from taxation and all such taxes and the levy thereof are null and void. These objectors therefore ask that judgment against said lots, pieces and parcels of land be refused."

Thereupon the said county court of Cook county, Illinois, at the July term, 1879, rendered judgment sustaining the said objection of the Board of Directors of the Chicago Theological Seminary filed at said July term 1879, and refused the said application of
52 the said county treasurer and *ex officio* county collector of Cook county for the said general taxes of 1878, on the land described in said objection.

That at the July term 1880, of the county court of Cook county Illinois, the county treasurer and *ex officio* county collector of Cook county, made application in said county court of Cook county, for judgment against lots 1, 2, 5, and 6, in block 1, in Woodlawn, in section 23, township 38 north, range 14, east of 3rd P. M., and other delinquent lands in the county of Cook for the general taxes on said delinquent lands levied for the year 1879. That thereupon the Board of Directors of the Chicago Theological Seminary at the said

July term, 1880, in said county court of Cook county, filed its objection in writing to said application for judgment against said lots 1, 2, 5, and 6, in block 1, in Woodlawn, stating that it was the owner of said lots and objected to judgment being rendered against the said lots for the following sole reason in writing.

"That each and all of said tracts and lots are exempt from taxation and all such taxes and the levy thereof are null and void. These objectors therefore ask that judgment against said lots, pieces and parcels of land be refused."

Thereupon the said county court of Cook county, Illinois, at the July term, 1880, entered judgment sustaining the said objection of the Board of Directors of the Chicago Theological Seminary filed at said July term 1880, and refused the said application of the said county treasurer and *ex officio* — of Cook county for the said general taxes of 1879, on the land described in said objection.

53 That at the July term 1881, of the county court of Cook county, Illinois, the county treasurer and *ex officio* county collector of Cook county, made application in said county court of Cook county, for judgment against lot 7, in C. Seipp's subdivision in section 25, town 38, north, range 14, east of 3rd P. M., and lot 43 block 2, Travers' subdivision in section 8, township 38, north, range 14, east of 3rd P. M., and other delinquent lands in the county of Cook for the general taxes on said delinquent lands levied for the year 1880.

That thereupon the Board of Directors of the Chicago Theological Seminary at the said July term 1881, in said county court of Cook county, filed its objection in writing to the said application for judgment against said lot 7, Seipp's subdivision and said lot 43, block 2 Travers' subdivision, stating that it was the owner of said lots and objected to judgment being rendered against the said lots for the following sole reason in writing.

"That each and all of said tracts and lots are exempt from taxation and all such taxes and the levy thereof are null and void These objectors therefore ask that judgment against said lots, pieces and parcels of land be refused."

Thereupon the said county court of Cook county Illinois, at the July term 1881, entered judgment sustaining the said objection of the Board of Directors of the Chicago Theological Seminary filed at said July term 1881, and refused the said application of the said county treasurer and *ex officio* county collector of Cook county for the said general taxes of 1880, on the land described in said objection.

54 That at the July term 1882, of the county court of Cook county, Illinois, the county treasurer and *ex officio* county collector of Cook county, Illinois, made application in said county court of Cook county, for judgment against lots 44 to 48, in block 2, in Travers' subdivision in section 8, township 38, north, range 14, east of 3rd P. M., and other delinquent lands in the county of Cook for the general taxes levied for the year 1881, that thereupon the Board of Directors of the Chicago Theological Seminary at the said July term 1882, in said county court of Cook county, filed

its objection in writing to said application for judgment against said lots 44 to 48, in block 2, in Travers' subdivision, stating that it was the owner of said lots and objected to judgment being rendered against the said lots for the following sole reason in writing.

"That each and all of said tracts and lots are exempt from taxation and all such taxes and the levy thereof are null and void. These objectors therefore ask that judgment against said lots, pieces and parcels of land be refused."

Thereupon the said county court of Cook county, Illinois, at the July term 1882, entered judgment sustaining the said objection of the Board of Directors of the Chicago Theological Seminary filed at said July term 1882, and refused the said application of the said county treasurer and *ex officio* county collector of Cook county for the said general taxes of 1881, on the lands described in said objection filed to said July term 1882.

That at the July term 1884 of the county court of Cook county, Illinois, the county treasurer and *ex officio* county collector of Cook county, Illinois, made application in said county court of
55 Cook county, for judgment against lots 39 to 48, in block 2, in Travers' subdivision in section 8, township 38, north, range 14, east of 3rd principal meridian, and other delinquent lands in the county of Cook, for the general taxes on said delinquent lands levied for the year 1883. That thereupon the Board of Directors of the Chicago Theological Seminary at the said July term 1884, in said county court of Cook county, filed its objection in writing to said application for judgment against said lots 39 to 48 block 2, Travers' subdivision, stating that it was the owner of said lots and objected to judgment being rendered against the said lots for the said general taxes of 1883, for the following sole reason in writing.

"That each and all of said tracts and lots are exempt from taxation and all such taxes and the levy thereof are null and void. These objectors therefore ask that judgment against said lots, pieces and parcels of land be refused."

Thereupon the said county court of Cook county, Illinois, at the July term 1884, entered judgment sustaining the said objection of the Board of Directors of the Chicago Theological Seminary, filed at said July term 1884, and refused the application of the said county treasurer and *ex officio* county collector of Cook county, for judgment for the said general taxes of 1883, on the land described in said objection filed to said July term 1884.

It was thereupon stipulated and conceded, that at the July term 1894, of the county court of Cook county, Illinois, the county treasurer and *ex officio* county collector of Cook county, Illinois, made application in said county court, for judgment against sublot 1, in the assessors' division of lots 9 and 10, Bronson's addi-
56 tion to Chicago; lots 16 to 19, both inclusive, in block 1, in Union Park addition to Chicago; lots 32 to 36, both inclusive, in block 20, in Bickerdike's addition to Chicago; lot 2 block 18, in the original town of Chicago, and the S. E. ¼ of the S. W. ¼ of section 33, township 38, north, range 13, east of the 3rd principal meridian, all in Cook county, Illinois, for the general taxes levied

for the year 1893. That thereupon the Board of Directors of the Chicago Theological Seminary at the said July term 1894, filed its objection in writing to said application for judgment against the said lots, and offered in evidence the said objections, such objections being in words and figures as follows:

STATE OF ILLINOIS, } ss:
Cook County, }

In the County Court of Cook County, July Term, 1894.

In the matter of the application of CHARLES KERN, county collector of Cook county, for judgment for taxes, &c.

The Board of Directors of the Chicago Theological Seminary, a corporation organized under the laws of the State of Illinois, by David Fales, its attorney, shows unto your honor, that it is the owner of, and interested in, the following lots, pieces and parcels of land, and that the same are exempt from all taxes whatsoever. Said property, being described as follows.—

Sublot one (1), in the assessors' division of lots nine (9) and ten (10), in Bronson's addition to Chicago.

Lots sixteen (16) to nineteen (19) both inclusive, in block one (1), in the Union Park addition to Chicago.

Lots thirty-two (32) to thirty-six (36) both inclusive, in block twenty (20), in Bickerdike's addition to Chicago.

57 Lot two (2), block eighteen (18), in the original town of Chicago, in section nine (9), township thirty-nine (39) north, range fourteen (14) east of the third (3rd) principal meridian. (The same being described as sublots one (1) to four (4) of the north seventy-five (75) feet of lot two (2), in block eighteen (18); and the south seventy-five (75) feet of lot two (2), block eighteen (18); all in the original town of Chicago.)

The southeast quarter (S. E. ¼) of the southwest quarter (S. W. ¼), of section thirty-three (33) township thirty-eight (38) north, range thirteen (13), east of the third (3rd) principal meridian.

All the foregoing being in Cook county, Illinois.

And it objects to judgment being rendered against the said lots and each thereof, for any amount whatever, or for any taxes whatever, because it says, that by its charter, all its lands and real estate of every kind and description are exempt from all taxes and that any and all levies of taxes thereon are void.

It therefore asks that these objections may be sustained, and that it, and the said lots, may be hence dismissed with its costs in this behalf sustained.

DAVID FALES,
Attorney for the Board of Directors of the Chicago Theological Seminary.

Filed Jul- 9–1894.

HENRY WULFF, *Clerk.*

It was thereupon stipulated and conceded, that at the July term 1894, of the county court of Cook county, Illinois, the said county court of Cook county, rendered judgment sustaining the said
58 objection of the Board of Directors of the Chicago Theological Seminary, filed July 9 1894 and refused the said application of the said county treasurer and *ex officio* county collector for judgment, for the said general taxes of 1893, on the land described in said objection, namely. Sublot 1, in the assessors' division of lots 9 and 10, Bronson's addition to Chicago; lots 16 to 19, both inclusive, in block 1, in Union Park addition to Chicago; lots 32 to 36 both inclusive, in block 20, in Bickerdike's addition to Chicago; lot 2, block 18, in the original town of Chicago, and the S. E. ¼ of the S. W. ¼ of section 33, township 38, north, range 13, east of the 3rd principal meridian, Cook county, Illinois.

It was thereupon stipulated and conceded in open court, that at the July term 1895, the county treasurer and *ex officio* county collector of Cook county, Illinois, made application in the county court of Cook county, Illinois, for judgment against lots 32 to 36 both inclusive, in block 20, Bickerdike's addition to Chicago; lots 16, 17, 18 and 19, block 1, Union Park addition to Chicago; sublot 4, in the assessors' division; lots 12 to 16, block 9, in Ashland Second addition to Chicago; sublot 5, in Gard's subdivision of the south half of lot 2, of the assessors' division of the east half of block 45, in the canal trustees' subdivision of section 7, township 39, north, range 14, east of 3rd P. M. Lots 20, 21 and 24, in subdivision of block 23, in James W. Scoville's subdivision of the west half of the northeast quarter of section 7, township 39, north, range 13, east of 3rd P. M., and the south half of the east half of the S. W. ¼ of section 33, township 38, north, range 13, east of 3rd P. M., in Cook county,
59 Illinois, and other delinquent lands in Cook county, for the general taxes levied respectively thereon, for the year 1894.

Thereupon the objector offered and read in evidence, the objection filed by the Board of Directors of the Chicago Theological Seminary, in the said county court of Cook county, Illinois, to said application for judgment, in words and figures as follows:

STATE OF ILLINOIS, } *ss*:
Cook County, }

In the County Court of Cook County.

PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* D. H. Kochersperger, County Treasurer and *ex Officio* County Collector of Cook County,	Application for Judgment for Taxes, &c.
vs.	
THE BOARD OF DIRECTORS OF THE CHICAGO Theological Seminary *et al.*	

Now comes the Board of Directors of the Chicago Theological Seminary, &c., owners of, and interested in the tracts of land set oppo-

site their names in schedule hereto attached, and object to judgment being rendered against the lots described in said schedule for the following reasons:

First. The said lots are exempt from taxation.

Second. The taxes levied on said lots and each thereof are void.

Third. This court has no jurisdiction to enter judgment against said lots or either thereof, as the same and each thereof, are exempt and free from all taxation.

Fourth. The county clerk of Cook county had no power to levy or extend any tax on any of said lots.

DAVID FALES,
Attorney for Objectors.

60 SCHEDULE "A."

Owner, Board of Directors of the Chicago Theological Seminary.

Description.

Lots 32, 33, 34, 35 and 36, in block 20, Bickerdike's addition to Chicago. Lots 16, 17, 18 and 19, in block 1, in Union Park addition to Chicago. Sublot 4 in the assessors' division of lots 12 to 16 in block 9, in Ashland Second addition to Chicago, being the south 14 feet and 3 inches of lot 14 and the north 5 feet and 9 inches of lot 15 in said block 9 Ashland Second addition. Sublot 5 in Gard's subdivision of the south half of lot 2 of the assessors' division of the east half of block 45 in the canal trustees' subdivision of sec. 7, township 39 north range 14 E. of 3rd P. M.

Lots 20, 21 and 24 in the subdivision of the west half of the northeast quarter of section 7, township 39 north range 13 east of 3rd P. M.

The south half of the east half of the southwest quarter of section 33, township 38 north range 13 east of 3rd P. M.

Filed Jul- 9, 1895.

PHILIP KNOPF, *Clerk.*

It was thereby stipulated and conceded, that at the July term 1895, of the county court of Cook county, Illinois, the said county court of Cook county, Illinois, rendered judgment sustaining the said objection of the Board of Directors of the Chicago Theological Seminary, and refused the application of said county treasurer and *ex officio* county collector for judgment for the said general taxes of 1894, upon the lots described in said objection, namely, lots 32 to 36, block 20, Bickerdike's addition to Chicago. Lots 16, 17, 18
61 and 19, block 1, in Union Park addition to Chicago; sublot 4, in the assessors' division of lots 12 to 16 block 9, Ashland Second addition to Chicago. Lot 5 in Gard's subdivision of the south half of lot 2 of the assessors' division of the east half of block 45, in the canal trustees' subdivision of section 7, township 39, north, range 14, east of 3rd P. M. Lots 20 21 and 24, in the subdivision of block 23, in James W. Scoville's subdivision of the W. ½ N. E ¼ section 7, township 39, north, range 13, east of the 3rd P. M. The S. ½

E. ½ of S. W. ¼ of section 33 township 38, north, range 13, east of 3rd P. M.

It was thereupon stipulated and conceded in open court, that at the July term 1896, the county treasurer and *ex officio* county collector of Cook county, Illinois, made application in the county court of Cook county, for judgment for the general taxes of the year 1895, against lots 32, 33, 34, 35 and 36, in block 20, Bickerdike's addition to Chicago.

Lots 16, 17, 18 and 19, in block 1, in Union Park addition to Chicago, and other property described in the objections next herein set forth.

Thereupon the objector offered and read in evidence, the objection of the Board of Directors of the Chicago Theological Seminary, filed in the said county court of Cook county, Illinois, to said application for judgment, July 15, 1896, in words and figures as follows:

"STATE OF ILLINOIS, } ss:
Cook County, }

In the County Court of Cook County, July Term, A. D. 1896.

62 THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* D. H. Kochersperger, County Collector of Cook County,
vs.
THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL SEMINARY, a Corporation, Impleaded, &c. } Application for Judgment for Taxes.

Now come the Board of Directors of the Chicago Theological Seminary, a corporation organized under the laws of the State of Illinois, owner- and interested in the different tracts of land and lots respectively, set forth in schedule hereto attached respectively, and object to judgment being rendered in this proceeding against the said lots and tracts of land for any amount whatever for any taxes, for the following reasons.—

First. Each and all of said tracts of land and lots are exempt and free from all taxation whatever.

Second. The taxes levied on said lots and each thereof, are void.

Third. This court has no jurisdiction to enter judgment against said lots or either thereof, as the same and each thereof are exempt and free from all taxation.

Fourth. The county clerk of Cook county had no power to levy or extend any tax on any of said lots.

'SCHEDULE A.'

Owner, Board of Directors of the Chicago Theological Seminary.

Description of Property.

Lots 32, 33, 34, 35 and 36, in block 20, Bickerdike's addition to Chicago.

Lots 16, 17, 18 and 19, in block 1, in Union Park addition to Chicago.

Sublot 4 in the assessors' division of lots 12 to 16 in block 9, in Ashland Second addition to Chicago, being the south 14 feet and 3 inches of lot 14 and the north 5 feet and 9 inches of lot 15 in said block 9 Ashland Second addition.

63 Lots 16, 17, 19, 20, 21, 23, 24, 25 & 26, in the subdivision of block 23 in James W. Scoville's subdivision of the west half of the northeast quarter of section 7, township 39 north range 13 east of 3rd P. M.

The south half of the east half of the southwest quarter of section 33, township 38 north range 13 east of 3rd P. M.

Lots 2 & 5 in Eastman's subdivision of part of lots 7 & 8 in the Cook county circuit court partition of the southwest quarter of section 8, in township 39, north, range 14 east of the 3rd principal meridian. Also private alley south and adjoining the said sublot 5, in said Eastman's subdivision described aforesaid.

Sublots 6, 7 & 8 in lots 3 & 4 in block 26, in School Section addition to Chicago, in section 16, township 39 north, range 14 east of the 3rd principal meridian. Said sublots 6, 7, & 8 being in Collins' subdivision of lots 3 & 4, in block 26, in School Section addition to Chicago.

Also lots 5 & 6 in block 3 in Page & Wood's subdivision of block 50, of the canal trustees' subdivision of section 7, township 39 north, range 14 east of the 3rd principal meridian.

Also sublot 1 of a subdivision by E. J. Louis of lots 1, 2, 3 & 4 of block 16, of Ashland Second addition to Chicago.

Also lot 10 and the east half of lot 11, in the subdivision of block 46 in the canal trustees' subdivision of section 7, township 39 north, range 14 east of the 3rd principal meridian.

Also sublot 1 in lots 9 & 10, in Bronson's addition to Chicago. Beginning at northwest corner of lot 9, running south on west line of said lot 9 81.70 feet; thence east 156 feet to east line of lot

64 10; thence north on said east line 81.70 feet more or less to the northeast corner of said lot 10; thence west to place of beginning.

Also lots 84 to 89 both inclusive in Hubbard's subdivision of block 1, in Reid's subdivision of the west half southeast quarter of section 27 township 39 north, range 13 east of the 3rd principal meridian.

Also the east 19.43 feet of lot 4 in the assessors' subdivision of part of lot 2 and all of lots 3 to 7 in block 64 in the canal trustees'

subdivision of section 7, township 39 north, range 14 east of 3rd P. M.

Filed July 15 1896.

PHILIP KNOPF, *Clerk*."

It was thereupon stipulated and conceded, that at the July term 1896, the said county court of Cook county, Illinois, rendered judgment sustaining the said objections of the Board of Directors of the Chicago Theological Seminary, filed July 1896, and refused the said application of the said county treasurer and *ex officio* county collector of Cook county, for the said general taxes of 1895, on the land described in said objections filed July 15 1896 aforesaid.

It was also admitted, that no appeal has ever been taken from nor writ of error sued out on any of said judgments in any of the years when the same was rendered as stipulated above.

It was thereupon stipulated and conceded, that at the July term 1897, of the county court of Cook county, Illinois, the county treasurer and *ex officio* county collector made application for judgment against the property set forth in objections next hereafter set out, and other delinquent lands in the county of Cook for the general taxes levied for the year 1896.

65 Said applicant thereupon offered in evidence the objections filed by the objector July 12 1897 as follows:

"STATE OF ILLINOIS, } ss:
Cook County, }

In the County Court of Cook County, July Term, A. D. 1897.

THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* D. H. Kochersperger, County Collector of Cook County,	Application for Judgment for Taxes.
vs.	
THE BOARD OF DIRECTORS OF THE Chicago Theological Seminary, a Corporation, Impleaded, &c.	

Now come the Board of Directors of the Chicago Theological Seminary, a corporation organized under the laws of the State of Illinois, owners May 1" *May 1"* 1896 & since and interested in the different tracts of land and lots respectively, set forth in schedule hereto attached respectively, and object to judgment being rendered in this proceeding against the said lots and tracts of land for any amount whatever for any taxes, for the following reasons:

First. Each and all of said tracts of land and lots are exempt and free from all taxation whatever.

Second. The taxes levied on said lots and each thereof, are void.

Third. This court has no jurisdiction to enter judgment against said lots or either thereof, as the same and each thereof, are exempt and free from all taxation.

Fourth. The county clerk of Cook county had no power to levy or extend any tax on any of said lots.

DAVID FALES,
Attorney for the Board of Directors of the Chicago Theological Seminary.

66 SCHEDULE 'A.'

Board of Directors of the Chicago Theological Seminary — owners of the following property:—

Lot ten (10) and east ½ of lot eleven (11) in block forty-six (46), in canal trustees' subdivision of section seven (7), township 39 north, range 14, east of the 3rd P. M.

East 19.43 feet sublot four (4), assessors' division of lot two (2), and lots three (3) to seven (7) in block sixty-four (64) in the canal trustees' subdivision of section 7, in township 39 north, range 14 east of 3rd P. M.

Lots 32, 33, 34, 35 and 36, in block 20, in Bickerdike's addition to Chicago.

Also lots 16, 17, 18 and 19, in block 1, in Union Park addition to Chicago.

Also lots 2 and 5, in Eastman's subdivision of part of lots 7 and 8, in circuit court partition of the southwest ¼ of section 8, township 39 north, range 14 east of 3rd P. M.

Also private alley south and adjoining the said sublot 5, in said Eastman's subdivision, described as aforesaid.

The south 14 feet and 3 inches of lot 14, and the north 5 feet and 9 inches of lot 15, in block 9, in Ashland Second addition to Chicago, being sublot 4 in lots 12 to 16 in block 9, in section 18, township 39 north, range 14 east of 3rd P. M. (Ashland Second addition.)

Also sublots 6, 7 and 8, in lots 3 and 4, in block 26, in School Section addition to Chicago, in section 16, township 39 north, range 14 east of 3rd P. M. Said sublots 6, 7 and 8, being in Collins' subdivision of lots 3 and 4, in block 26, in School Section addition to Chicago.

67 Lots 5 and 6, in block 3, in Page and Wood's subdivision of block 50, in canal trustees' subdivision, section 7, township 39 north, range 14 east of 3rd P. M., being also lots 1, 2, 3 and 4, in sublots 5 and 6, in lot 3, in block 50, canal trustees' subdivision, in section 7, township 39 north, range 14 east of 3rd P. M.

Also sublot 1, of a subdivision by E. J. Lewis of lots 1, 2, 3 and 4, in block 16, in Ashland Second addition to Chicago.

Also sublot 1 in assessors' subdivision of lots 9 and 10, in Bronson's addition to Chicago. Beginning at northwest corner of lot 9, running south on west line of lot 10; thence north on said east line 81.70 feet more or less to the northeast corner of said lot 10; thence west to place of beginning.

Also the south ½ of the east ½ of southwest ¼ of section 33, township 38 north, range 13 east of 3rd P. M.

Also lots 16, 17, 19, 20, 21, 23, 24, 25 and 26, in block 23, in J. W.

Scoville's subdivision of section 7, township 39, north, range 13 east of 3rd P. M. (being in James W. Scoville's subdivision of the west ½ of the northeast ¼ of said section 7).

Also lots 23, 24, 25, 26 and 27, in block 206, in Maywood, in sections 2, 11 and 14, township 39 north, range 12, east of 3rd P. M.

Also the east ten (10) acres of the south 30 acres of the west ½ of the northwest ¼ of section 28, township 40 north, range 13 east of 3rd P. M.

DAVID FALES, *Att'y, &c.*

Filed Jul- 12 1897

PHILIP KNOPF, *Clerk.*

68 It was thereupon stipulated and conceded, that at the July term 1897, of the county court of Cook county, Illinois, the said county court of Cook county, Illinois, rendered judgment sustaining the said objections of the Board of Directors of the Chicago Theological Seminary, filed July 12 1897, and refused the said application of the said county treasurer and *ex officio* county collector of Cook county, for judgment, for the said general taxes of 1896, on the land described in said objections and set forth in the said objections filed July 12 1897. That appeal was taken by the said applicant to the supreme court of the State of Illinois, and that the supreme court of Illinois June 18, 1898, filed the opinion of the court, as set forth in the 174 Ill., at page 177, but that no mandate has been issued by the supreme court of Illinois remanding such cause to the county court of Cook county, Illinois, and that no transcript of the order of the supreme court of Illinois, remanding the cause to the county court of Cook county, has ever been filed in the county court of Cook county.

To each and every one of the facts above stipulated to and conceded as to the application for judgment in former years the filing of objections by objector, and the contents thereof and the action of the court on such objections, and that no appeal or writ of error was prayed, petitioner entered their objection to their admission as evidence on the ground that the same are irrelevant, incompetent and immaterial, which objections were overruled by the court, to which ruling applicant entered their exception herein, the stipulation only admitting the facts and waiving direct proof thereof but being no admission on behalf of applicant that the facts are competent evidence.

69 It was also stipulated and agreed that tract 1 described in the objections of objector in this suit filed to July term 1900 in this court, was conveyed to the said objector by deed, dated September 12th 1878, recorded in recorder's office of Cook county, September 25th, 1878, for a consideration stated therein of $4400.

That property described in tract 2 of the said objections filed in this suit by objector, was conveyed to the objector by deed dated August 31st, 1894, recorded in recorder's office of Cook county, August 31st, 1894, at a consideration stated therein of $80,000.

That the property described in tract No. 3 of the said objections filed by objector in this suit, was conveyed to the objector by deed

dated January 7th, 1895, recorded in the recorder's office of Cook county, Illinois, January 7th, 1895, and that the consideration stated therein, was $14,500, and the said property was a gift to said objector.

That the property described in tract 4 in said objections filed by objector in this suit, was conveyed to this objector, by deed dated October 25th, 1887, recorded in the recorder's office of Cook county, October 29th 1887, and that the consideration stated therein was $50,000, and that the said property was a gift to said objector.

That the tract described in tract 5 in said objections filed by objector in this suit, was conveyed six lots thereof by deed dated June 30th, 1894, recorded in the recorder's office of Cook county November 21st, 1894. That the consideration stated in the deed of said lots was $17,500, and that the said property was a gift to said objector.

That the remaining three lots described in said tract 5 *was*
70 conveyed to this objector by deed dated June 4th 1890, recorded July 1st, 1900, in the recorder's office of Cook county. That the consideration stated in said deed was the sum of $10,000, and that the same was a gift of said property to said objector.

That the property described in tract 6 of the said objections filed by objector in this suit, was conveyed to the objector by deed dated January 2nd, 1896, recorded in the recorder's office of Cook county, Illinois, January 8th, 1896, and that the consideration stated therein, was $3000, and that the said property was a gift to said objector.

That the property described in tract 7 in said objections filed by objector in this suit, was conveyed to this objector, by deed dated November 1st, 1893, recorded in the recorder's office of Cook county, Illinois, November 29th, 1893, and that the consideration stated therein, was $14,000, and that the said property was a gift to said objector.

That the property described in tract 8 in said objections filed by objector in this suit, was conveyed to this objector, by deed dated September 15th, 1897, recorded in the recorder's office of Cook county, Illinois, September 25th, 1897, and that the consideration stated therein was $500.00, and that the said property was a gift to said objector.

That the property described in tract 9 in said objections filed by objector in this suit, was conveyed to this objector, by deed dated January 4th, 1899, recorded in the recorder's office of Cook county, Illinois, January 17th, 1899, and that the consideration stated therein, was $2000.

That the property described in tract 10 in said objections
71 filed by objector in this suit, was conveyed to this objector, by deed dated January 9th, 1894, recorded January 15th, 1894, in the recorder's office of Cook county, Illinois.

That the property described in tract 11 in said objections filed by objector in this suit, was conveyed to this objector, by deed dated April 24th, 1880, recorded in the recorder's office of Cook county, Illinois, May 17th 1880.

That the property described in tract 12 in said objections filed by objector in this suit, was conveyed to the objector, by deed dated

December 15th, 1877, recorded in the recorder's office of Cook county, December 15th 1877; said deed being as to four lots, lots 33, 34, 35 and 36; and as to lot 32, by deed dated April 16th, 1891, recorded in the recorder's office of Cook county, April 19th, 1891.

That the property described in tract 13 in the said objections filed in this suit by the objector, was conveyed to this objector, by deed dated June 28th, 1892, and recorded in the recorder's office of Cook county, July 15th, 1892, and that the consideration stated therein, was the sum of $112,500.

That the property described in tract 14 in said objections filed by objector in this suit, was conveyed as to lot 2, by deed dated November 1st, 1893, recorded in the recorder's office of Cook county, November 18th, 1893, and that the consideration stated therein, was the sum of $10,000, and the same was a gift to said objector. That lot 5 in said tract 14 was conveyed to this objector, by deed dated April 28th, 1888, recorded in the recorder's office April 30th, 1888, and that the consideration stated therein, was $9,000.

72 That the property described in tract No. 15 in said objections filed in this suit, was conveyed to this objector, by deed dated June 15th, 1875, recorded in the recorder's office of Cook county, June 17th, 1875, and that the consideration stated in said deed, was the sum of $2500.

That the property described as tract 16 in the said objections filed by this objector in this suit, was conveyed to this objector, by deed dated January 16th, 1895, recorded in the recorder's office of Cook county, February 11th, 1895, and that the consideration stated in said deed, was the sum of $155,000.

And the objector farther to maintain the issues on its behalf introduced as a witness, DAVID FALES, who being first duly sworn, testified as follows:

Direct examination by Mr. GARNETT:

Q. Your name is David Fales?

A. Yes sir.

Q. You are the attorney for the Board of Directors of the Chicago Theological Seminary?

A. I am.

Q. How long have you acted as such attorney?

A. Over twenty-five years.

Q. Have you filed objections in different years to the application for judgment for the general taxes against the property and real estate of the Board of Directors of the Chicago Theological Seminary?

Mr. JOHNSON: To that we object as incompetent, irrelevant and immaterial, as to prior years.

The COURT: Objection overruled.

A. I have.

Mr. GARNETT:

Q. Can you state for what years you filed objections?

73 Mr. JOHNSON: The same objection.

A. I have filed or caused to be filed since I think 1877 or 1878 either in my own name or employed other attorneys, in one or two cases Mr. Whitehead, in another case Mr. Wilson.

Objections.

Q. Every year?

A. I can't say every year, but a great many years. I can give them in detail.

Q. In what court did you file those objections?

A. In the county court of Cook county.

Q. Was any of the property for which objections were so filed in any of those years property that was used by the Chicago Theological Seminary for seminary purposes or occupied by them?

The COURT: "Exclusively" I would suggest, to use the language of the statute.

Mr. STRUCKMAN: Use the language of the charter.

Mr. GARNETT:

Q. Was the Board of Directors of the Chicago Theological Seminary, or any of its buildings for educational purposes located upon any of the property for which objections were filed in the years you have named to the judgment for the general taxes?

Objected to; objection overruled.

A. There was in all the time I have been connected with the seminary as representing it in filing these objections, not a single case, except I think one, where any property occupied by the seminary buildings were involved in the application for judgment. I think in one year there was one tract, I am in doubt about it for one year as to one tract, but as to all the others there never was a single case where the property was occupied by the institution of learning.

74 Q. Describe the one tract that was so occupied.

A. I am not certain as to this one tract. I remember the tract back of the institution, but I think it is possible that one tract in this objection of 1891 might have been occupied by the seminary, but I am not sure.

Q. What one is that?

A. Sublot one.

The COURT:

Q. What is the description of the premises occupied by the seminary?

A. That covers the whole thing.

Mr. GARNETT:

Q. Take the property described in the objection filed to the application now before the court, objections filed by the Board of Directors of the Chicago Theological Seminary, is any of that property occupied by any of the seminary buildings or for seminary purposes or for the instruction of pupils?

A. No, it is not.

Q. Is that property all improved, or part of it improved and part unimproved?

A. It is partially improved and partially vacant.

Q. The property that is improved, is that rented to tenants of the Chicago Theological Seminary?

A. Tenants of the Chicago Theological Seminary, yes sir.

Cross-examination by Mr. JOHNSON:

Q. How near is the nearest piece of this property to the seminary building, Mr. Fales?

A. It may some of it be within a block.

Q. Separated by a street or a block or for a mile?

A. I think, if I remember right, that one tract, that a part of the church may be located on the avenue, I think just west of
75 Union Park or Washington boulevard, that we took it by foreclosure.

Q. The nearest to the property would be one block distant?

A. Yes, about that.

Q. From the seminary proper?

A. Yes sir.

Redirect examination by Mr. GARNETT:

Q. Mr. Fales, do the deeds in the possession of the Board of Directors of the Chicago Theological Seminary for the property described in the objections now before the court state truly the several considerations paid by the seminary for those properties?

Objected to as immaterial.

The COURT: Let him answer.

A. In answer to that question I would say a few of the deeds were gifts to the seminary and whether they represent them as being gifts I have no knowledge. A large part of them do represent the actual consideration given for the property.

Mr. GARNETT:

Q. They were all either purchases or gifts?

A. They were all either purchases or gifts or foreclosures.

Q. And in all cases of purchases and foreclosures the deeds state the true consideration?

A. I think they do.

Q. Were you present in the county court during the hearing of the objections in prior years, years prior to this year?

Objected to.

A. I was present at I think all of the hearings of objections filed by myself, at the time of the hearing.

Q. Was there any objection made or considered by the court at any such time other than that of the right of the seminary
76 to exemption of its property from taxation?

A. I was present at each of the hearings during the past fifteen or more years of the objections I filed to the application for judgment against the lands of objector, and the only contention at each of said applications and hearings was whether the property of the objector described in objections respectively was exempt from taxation under the charter of objector.

I presented a copy of the charter at each of said hearings or a copy of said charter of the objector was before the court, which copy is the same as the copy introduced in evidence in this case. At each of said hearings I contended that the charter of said objector exempted all the real estate of the objector from taxation, and none of the property in any of said objections was property that was ever occupied by the institution of learning of said objector, but was property either leased by said objector or vacant, except one tract in objections filed in 1891, bought for uses of school, but on which at that time or time of levy the buildings had not been completed.

At several of said hearings, and I think at all of them, the attorney for county treasurer claimed that as said property was not occupied by the institution of learning of objector but was leased or vacant, the section of objector's charter giving exemption did not exempt the said property. There was no other contention made at any of said hearings, and no attack was made at any of said hearings upon the levy of said taxes or that the same were null and void for any reason except that the land of objector was exempt from taxation. The sole and only contention at each of said hearings was whether the land of objector described in objections was
77 exempt under the provisions of its charter from taxation.

Cross-examination:

That the meaning of the word "seminary" in the 5th clause of objector's charter was not discussed by court or counsel on the hearings of the objections in the county court prior to the year 1897. And I do not know that the court considered the meaning of that word prior to that year, unless its meaning may have been involved in what I have stated in my direct examination. The court held the property exempt, but did not make any statement as to the meaning of the word "seminary" in said 5th clause of the charter.

Redirect examination by Mr. GARNETT:

At several of the hearings on the applications aforesaid it was claimed by the attorney representing the county treasurer that as the property of the corporation on which judgment was sought was leased by the objector and income was derived therefrom, that such property was subject to taxation and was not exempt from taxation by its charter, and the cases were heard by the court on the assump-

tion of fact that the land was not occupied and used by the institution conducted by this objector for its institution of learning.

Which was all the evidence taken in the above-entitled matter. And thereupon the said court found the issues for the applicant, and entered judgment overruling said objections filed by objector and against the lands described in the objections filed by objector, to which finding of the said court and the said judgment overruling the objections of objector and against the lands of the said objector, the said objector duly excepted. And forasmuch as the foregoing does not appear of record, the objector tender- this, its bill of
78 exceptions for certifications, which is accordingly done this 17th day of November, A. D. 1900.

R. W. S. WHEATLEY, [SEAL.]
Acting County Judge.

O K.
DAVID FALES.
J. A. JOHNSON.

No. 166 General taxes. County court Cook county In the matter of the application of Samuel B. Raymond, county treasurer and *ex officio* county collector of Cook county, for judgment for delinquent taxes for the year 1899 *vs.* The Board of Directors of the Chicago Theological Seminary, a corporation, impleaded &c. Bill of exceptions. Filed Nov. 17, 1900 Philip Knopf clerk. David Fales attorney for objector 65 Portland block Chicago. Gwynn Garnett, of counsel.

79 STATE OF ILLINOIS, } *ss:*
County of Cook, }

I, Philip Knopf, clerk of the county court of Cook county, in the State aforesaid, and keeper of the records and files thereof, do hereby certify that the foregoing is a true correct and complete transcript of the record in the matter of the objections of the Board of Directors of the Chicago Theological Seminary by David Fales its attorney filed to the application of Samuel B. Raymond county treasurer and *ex officio* collector of the county of Cook for judgment of sale for the delinquent taxes levied and assessed for the year 1899 (except the bill of exceptions) the original bill of exceptions being by stipulation incorporated herein and made a part of this transcript of the record, general No. 166, all of which appears from the records and files of my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said county court, at my office in the city of Chicago, in said county, this 26th day of November A. D. 1900.

[SEAL.] PHILIP KNOPF,
Clerk of the County Court.

80 In the Supreme Court of the State of Illinois, December Term, A. D. 1900.

THE BOARD OF DIRECTORS OF THE CHICAGO Theological Seminary, a Corporation, etc., Appellant, *vs.* THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* Samuel B. Raymond, County Treasurer and *ex Officio* County Collector of Cook County, Appellee.	Appeal from County Court, Cook County.

Assignment of Errors.

And now come The Board of Directors of the Chicago Theological Seminary, a corporation etc., appellant by David Fales, its attorney, and says, that in the record and proceedings and in rendering judgment aforesaid there is manifest error in this to wit:

I. The finding of the said county court of Cook county is contrary to the law.

II. The finding of the said county court of Cook county is contrary to the evidence.

III. The county court below erred in entering judgment against appellant's lands.

IV. The county court below erred in not holding as exempt from taxation under its charter, the lots and lands described in its objections.

V. The court below erred in not sustaining the objections of appellant and in rendering judgment against the lands of appellant described in its objections.

VI. The county court below erred in not holding that the judgment of the county court of Cook county on former applica-
81 tions made by the county treasurer and *ex officio* collector of Cook county for judgment against appellant's lands for the general taxes of prior years were not each and all thereof a bar to the application of the county treasurer and *ex officio* collector of Cook county for judgment for taxes of 1899, against lands of appellant described in appellant's objections filed in this case.

VII. The county court below erred in holding that the judgments of the county court of Cook county that the appellant was free and exempt from taxation under its charter on former applications for judgment by the county treasurer and *ex officio* collector of Cook county, Illinois, for the taxes of prior years, and each thereof were not a bar to the application for judgment by the county treasurer and *ex officio* collector of Cook county, for the general taxes of 1899, against appellant's lands in the present proceeding.

VIII. The judgments of the county court of Cook county and each thereof on former applications by the county treasurer and *ex officio* collector of Cook county in former years holding appellant's lands free and exempt from taxation under its charter were a

bar to the application of the county treasurer and *ex officio* collector of Cook county for judgment for the general taxes of 1899, against appellant's lands in the present proceeding.

IX. The county court below erred in not holding the application of the county treasurer and *ex officio* collector of Cook county and the proceedings in this case to subject appellant's lands to taxation, to be a violation of the Constitution of the United States.

X. The county court below erred in holding that the application of the county treasurer and *ex officio* collector of Cook county
82 for judgment for general taxes against appellant's lands described in appellant's objections and the judgment of the county court was not a violation of paragraph one, section ten, article one; and also section one article fourteen of the Constitution of the United States.

XI. The county court below erred in holding that the application of the county treasurer and *ex officio* collector of Cook county in this proceeding against appellant's lands did not impair the obligation of the contract between the State of Illinois and this appellant arising from the charter granted this appellant by the State of Illinois.

XII. The county court below erred in holding that the application in this proceeding of the county treasurer and *ex officio* collector of Cook county for judgment against lands of appellant was not a violation of section one article fourteen of the Constitution of the United States.

XIII. The court below erred in rendering a judgment in favor of the appellee and against the appellant.

By reason whereof the appellant prays that said judgment may be reversed, etc.

By DAVID FALES,
Its Attorney.

GWYNN GARNETT,
Of Counsel.

83 Be it remembered, that afterwards to wit: on the 17th day of December A. D. 1900, certain proceedings were had in said court and orders entered of record, among which is the following, viz:

THE BOARD OF DIRECTORS OF THE Chicago Theological Seminary *vs.* THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* Samuel B. Raymond, County Treasurer and *ex Officio* Collector of Cook County.	1702. Appeal from County Court, Cook —.

Now on this day come the parties hereto, and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that —— ——, appellant, hath filed herein a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof, and briefs

and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee —— —— having entered motion to affirm said judgment and for costs and *procedendo*, and said motions being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the court:

Therefore it is ordered by the court that this cause be and the same is hereby taken under advisement.

84 At a supreme court, begun and held at Springfield on Tuesday, the fifth day of February in the year of our Lord one thousand nine hundred and one, within and for the State of Illinois.

Present: Carroll C. Boggs, chief justice. Benjamin D. Magruder, justice, Jacob W. Wilkin, justice, —— ——, justice, Joseph N. Carter, justice, James H. Cartwright, justice, John P. Hand, justice. Howland J. Hamlin, attorney general. Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk*.

Be it remembered, to wit, on the twentieth day of February A. D. 1901, the same being in vacation after the term of court aforesaid, the following proceedings were by said court, had and entered of record, to wit:

BOARD OF DIRECTORS OF CHICAGO THEOLOGICAL SEMINARY *v.* THE PEOPLE OF THE STATE OF ILLINOIS, *ex Rel.* Samuel B. Raymond, County Treasurer and *ex Officio* County Collector, Cook County.	No. 1702. Appeal from County Court, Cook —.

And now, on this day, this cause having been argued by counsel, and the court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and that in that record there is no error: Therefore it is considered by the court, that the judgment aforesaid be affirmed in all things, and stand in full force and effect, notwithstanding the said matters and things therein assigned for error. And it is further considered by the court, that the said appellee recover of and from the said appellant his costs by him in this behalf expended, and that he have execution therefor.

85 At a supreme court, begun and held at Springfield on Tuesday the fifth day of February in the year of our Lord one thousand nine hundred and one, within and for the State of Illinois.

Present: Carroll C. Boggs, chief justice. Benjamin D. Magruder, justice, Jacob W. Wilkin, justice, —— ——, justice, Joseph N. Carter, justice, James H. Cartwright, justice, John P. Hand, justice, Howland J. Hamlin, attorney general. Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk*.

Be it remembered, that afterwards, to wit, on the twentieth day of February, 1901, the opinion of the court was filed in the words and figures following, to wit:

BOARD OF DIRECTORS OF CHICAGO THEOLOGICAL SEMINARY *vs.* PEOPLE *ex Rel.* — No. 1702. Error to —. Appeal from County Court, Cook —.

86 Docket No. 1702—Agenda 67—Northern Div.—Dec., 1900.

BOARD DIRECTORS THEOLOGICAL SEMINARY *v.* THE PEOPLE.

This is an appeal from a judgment, rendered by the county court of Cook county on October 24, 1900, upon the application of the county treasurer and *ex officio* county collector of that county for judgment for the general taxes of 1899 against lands of the appellant.

Appellant, upon the trial below, filed objections to the entry of judgment against its property. These objections were: (1) That the property of appellant under its charter was exempt from taxation; (2) that, for a number of years prior to July, 1900, the county collector of Cook county in each year had made application in the county court of that county for judgment for the general taxes of the preceding year, and that, at each of said applications, appellant had claimed that its property was free and exempt from taxation under its charter, and said county court had rendered judgment sustaining such objections; that each of said judgments remains in full force and unreversed; that the proceedings leading up to the same were between the same parties; and that the only question, raised on each of said applications, was whether appellant's charter exempted all its real estate from taxation, although such real estate was not occupied by the institution of learning of the said appellant. The third objection seems to be, that the effort of the county treasurer and *ex officio* collector of Cook county to obtain judgment for the taxes of 1899 against appellant's lands, described in its objections, under and in pursuance of the revenue laws of Illinois, is in some way a violation of appellant's charter, viewed as a contract between appellant and the State of Illinois.

It was stipulated in open court on the trial of the cause, that some of the lots described in appellant's objections are vacant, and some are improved and rented to tenants; that all the income of the property described in the objections is used for the object contemplated

in appellant's charter, and that all of said lots were bought by appellant or given to it for the promotion of the objects named in its charter; that appellant is the owner of other lots, upon which it has constructed buildings wherein is given instruction by professors and instructors to carry out the objects of its charter; that the lots occupied by the buildings, where said instruction is given, are not
87 taxed; that, since February 15, 1855, when its charter was passed, appellant, having accepted the same, has expended in the erection and purchase of buildings upon the lands named in the objections, and upon other lots owned by it, an amount exceeding $200,000.00; and that a large number of students have been, and are being, instructed by said corporation according to its charter.

The county court, upon the trial below, overruled the objections so made by appellant, and rendered judgment against appellant's property, not occupied by buildings used for the purposes of its seminary and for the purposes of instruction by its professors and instructors, and in favor of the People for the taxes, etc., of 1899, and interest, penalties and costs.

Mr. Justice MAGRUDER delivered the opinion of the court:

First. The first objection, made by appellant to the entry of judgment by the county court against its lands, is that its charter exempts from taxation all of its real estate. We have already passed upon this question in *People v. Theological Seminary*, 174 Ill. 177. In the latter case, we held that section 5 of the act of 1855, incorporating the appellant, which provides "that the property, of whatever kind or description, belonging or appertaining to said seminary, shall be forever free and exempt from all taxation for all purposes whatsoever," refers only to property used in immediate connection with the seminary, and does not include other property which may be owned, rented or held by the said seminary as an investment, even though the income thereof is used solely for school purposes. We are satisfied with the conclusions reached in *People v. Theological Seminary, supra*, and decline to further discuss the question there passed upon and settled. The objection, made by the appellant based upon the ground of an alleged impairment of the obligation of its contract with the State of Illinois, is involved in this first objection and disposed of by the decision in relation thereto. It need not be separately considered. This court has merely construed appellant's charter, and given full force and effect to it as so construed.

Second. It appears that, in each year for a number of years
88 prior to 1897, appellant objected to the entry of judgment for general taxes in the county court against certain of its lands upon the alleged ground that said lands were exempt from taxation. It is insisted by the appellant that, in each of the applications so made for judgment for taxes against its lands, the issue was whether such lands, upon which its institution of learning was not located, were subject to taxation or not. The contention, now made in the present case, is that the judgments, so rendered by the county court in these former years in its favor sustaining the objections so made

by it, are in the nature of estoppels, and constitute a *res judicata* against the prosecution of the present proceeding.

It is well settled by the decisions of the Supreme Court of the United States and of this court, that, where a former adjudication is relied upon as an absolute bar, there must be, as between the actions, identity of parties, of subject-matter and of cause of action. But it is also well settled that, when the second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to those matters in issue, or points controverted, upon the determination of which the finding or verdict was rendered. Where some controlling fact or question, material to the determination of both causes, has been adjudicated in the former suit by a court of competent jurisdiction, and the same fact or question is again at issue between the same parties, its adjudication in the first will, if properly presented, be conclusive of the same question in the later suit, irrespective of the question whether the cause of action is the same in both suits or not. This is sometimes denominated an estoppel by verdict. In order that the judgment in the first suit shall operate as an estoppel in the second suit, it must appear on the face of the record, or must be shown by extrinsic evidence, that the precise question was raised and determined in the first suit. "In all cases, therefore, where it is sought to apply the estoppel of a judgment rendered upon one cause of action to matters arising in a suit upon a different cause of action, the inquiry must always be as to the point or question actually litigated and determined in the original action, not what might have been thus litigated and determined. Only upon such matters is the judgment conclusive in another action."
(*Cromwell v. County of Sac*, 94 U. S. 351; *Washington, Alex-*
89 *andria and Georgetown Steam Packet Co. v. Sickles*, 24 How. 333; *Bissell v. Spring Valley Township*, 124 U. S. 225; *Hanna v. Read*, 102 Ill. 596; *Wright v. Griffey*, 147 *id.* 496; *Leopold v. City of Chicago*, 150 *id.* 568; *Louisville, New Albany and Chicago Railway Co. v. Carson*, 169 *id.* 247; *Markley v. People*, 171 *id.* 260; *Young v. People*, 171 *id.* 299.) The burden of proof is always upon the defendant, who pleads *res judicata* because of a former judgment, to set up that judgment, and show what was determined by it, and what is common to the subsequent action. The proof must be clear, certain and convincing. (21 Am. & Eng. Ency. of Law, pp. 199, 200, 202.) If there be an uncertainty as to what was the precise question raised and determined in the former suit, as, for example, if it appears that several distinct matters may have been litigated, upon one or more of which the judgment may have been passed, without indicating which of them was litigated, the whole subject-matter of the action will be at large, and open to any new contention. But this uncertainty may be removed by extrinsic evidence showing the precise points involved, and determined in the former action. (*Markley v. People, supra.*)

The present action is not a prosecution for or upon the same claim or demand as that involved in the actions in former years. The present proceeding is an application by the county collector for a

judgment for taxes delinquent for the year, 1899, only, whereas the former judgments were rendered upon applications for taxes delinquent for other and different years. Hence in the case at bar, the burden of proof was upon the appellant to show that the question, determined by the former suits and judgments, was precisely the same question, as that which is involved here. But the proof is not altogether clear, that the same question was involved in all the prior proceedings and judgments insisted upon as *res judicata* by the appellant. In some years, when objections were made, the proof shows the making of a general objection, that the lands involved were exempt from taxation. From the general character of the objection, however, it does not appear whether the exemption claimed was based upon the language of appellant's charter, or whether the exemption was claimed under the provisions of the general revenue law of the State. Section 2 of the general revenue act provides, that "all property of institutions of learning, including the real estate on which the institutions are located, not leased by such institutions or otherwise used with a view to profit," shall be exempt from taxation. Whether the objections, insisting upon exemption, referred to this provision of the general revenue law, or to section 5 of appellant's charter, is not altogether clear as to many of the judgments rendered prior to 1897. Then, again, the proof shows that, in many of the years when objections were made, several objections, as well as that relating to exemption, were made to the entry of judgment, and it is not altogether clear whether the county court reached its conclusions in favor of the defendant because of the objection in relation to exemption, or because of some other one of the objections so made. We are not, therefore, satisfied that, upon the records themselves of the former judgments, or upon the oral proof introduced in the case, the same question here involved was passed upon, and decided by the former judgments of the county court. But, for the purposes of the present discussion, it may be admitted, that it was decided in the former proceedings in the county court, that the lands of the appellant, which were vacant and those which were improved and rented to outside parties not including the lots occupied by the buildings used exclusively for the purposes of the seminary, were not subject to taxation. Even if it was so decided, there is a sufficient reason why such former judgments by the county court cannot here be set up as establishing former recoveries, and as amounting to *res judicata*.

When application was made in 1897 to the county court for judgment for the general taxes of 1896, the appellant filed the objection, that its said tracts of land and lots were exempt from taxation, and the county court sustained the objection of the appellant so made, and rendered judgment to that effect, and refused the application of the county treasurer and *ex officio* county collector for judgment for the general taxes of 1896. Thereupon, an appeal was taken by the People, upon the relation of the county treasurer, to this court from the judgment, so entered in 1897 by the county court, sustaining appellant's objection. This court reversed the judgment of the

county court, and remanded the cause for further proceedings in accordance with the views expressed in the opinion in the case of *People v. Theological Seminary, supra.* The judgments, ren-
91 dered by the county court sustaining the objection in question in former years, cannot prevail as estoppels as against the judgment of reversal entered by this court on June 18, 1898, as appears from the case of *People v. Theological Seminary, supra.* The identical question, which, according to appellant's contention, was, in these former judgments, decided in favor of the appellant, was decided against the appellant and in favor of appellee in the decision rendered by this court in 1898.

This record presents a case where the defendant sets up a former judgment in its favor as an estoppel or *res judicata*, and the plaintiff insists upon another and later judgment, involving the same question, rendered in favor of such plaintiff, by a court of superior and appellate jurisdiction. Under such a state of facts, the old common-law rule was, that an estoppel against an estoppel opens up the whole matter, and sets it at large. In other words, under the common-law rule it was held that one estoppel neutralizes the other, and the question is left to be tried over. (Bigelow on Estoppel,—5th ed.—p. 360; *Shaw v. Broadbent*, 129 N. Y. 114.) If this common-law rule be applied here, so that the former judgments of the county court deciding the question in favor of the appellant, and the later judgment of this court deciding the question in favor of the appellee, are to be held to neutralize each other, so as to leave the question open to be tried over, we are of the opinion that the decision of the county court in the case at bar overruling the objection as to exemption made by appellant on the trial below, was correct, being in accordance with the views expressed in *People v. Theological Seminary, supra.*

But we are inclined to hold that, under the circumstances above detailed, the last judgment, which is the judgment rendered by this court, is the controlling one. In support of the position, that the last judgment is the controlling one, Van Fleet, in his work on Former Adjudication (vol. 1, p. 505), says: "This must be so, because each case calls upon the adverse party to show all the causes he has why the relief demanded should not be granted; and, if he has a judgment which is a defense, he must bring it forward, otherwise the adjudication against him will bar his right to claim under that judgment, as well as under any other defense." In 1897, when application was made for judgment against appellant's land for the taxes of 1896, it did not set up the prior judgments rendered
92 by the county court in its favor, as a defense by way of estoppel, or *res judicata*. Appellant should have then relied, as a defense, upon such alleged former recoveries, as well as upon the objection that its property was exempt from taxation. Inasmuch as appellant did not set up such former recoveries as a defense, the adjudication made against it by this court is a bar to its right to claim under such former judgments as estoppels.

In *Cooley v. Brayton*, 16 Iowa, 10, it was held that the last decree, rendered by the same court, affecting the rights of the same parties,

and relating to the same subject-matter, governed, and that a former decree, to be made effective as a prior adjudication, should have been pleaded as such.

In *Bateman v. Railroad Co.* 96 Mich. 441, the same doctrine was announced, and the case of *Cooley v. Brayton, supra,* was approved of; and it appeared in the *Michigan case* that the last judgment was held to govern and control, not only because it was last in point of time, but because it was the judgment of a superior tribunal, to wit, the supreme court of the State. (See also *Semple v. Wright,* 32 Cal. 659; *Semple v. Ware,* 42 *id.* 619; *Sharon v. Sharon,* 84 *id.* 424; 1 Freeman on Judgments,—4th ed.—sec. 332.)

It is, however, claimed on the part of the appellant, that the judgment, rendered by this court in *People v. Theological Seminary, supra,* was a judgment reversing and remanding the cause, and that, for that reason, it cannot be insisted upon as an estoppel or former adjudication. The judgment, rendered by this court in the case last referred to, was not merely a judgment reversing and remanding the cause for further proceedings, but it was a judgment, which reversed the judgment of the county court and remanded the cause "for further proceedings in accordance with the views herein expressed," that is, in accordance with the views expressed in the opinion in that case. By the terms of such a judgment the county court could not proceed otherwise than in accordance with the views expressed in the opinion in that case. The opinion held that the property, used in immediate connection with the seminary, was exempt from taxation, but that other property, owned by appellant which was rented or held by the seminary as an investment, was not subject to taxation. Hence, the county court could have
93 rendered any other judgment, after the reversal by this court, than a judgment overruling the objection, which had been made before the county court. Where this court announces a particular view of the law, and reverses and remands the case for further proceedings in accordance with the views announced by it, the court below is bound to examine the opinion, and apply the particular views of the law announced in the opinion, and render such judgment as is the necessary result of the application of such views.

Whatever may be the rule upon this subject in other jurisdictions, a judgment, rendered by this court reversing and remanding a cause for further proceedings in accordance with the views expressed in the opinion rendered, is a final judgment, so far as the questions decided in the opinion are concerned. This is so, because of the language of section 80 of the practice act, which provides as follows: "In all cases of appeal and writ of error, the supreme court or appellate court may give final judgment and issue execution, or remand the cause to the inferior court, in order that an execution may be there issued, or that other proceedings may be had thereon." In *Boggs v. Willard,* 70 Ill. 315, this section of the practice act was referred to and quoted, and, in connection with such quotation, it was said: "In numerous cases, it has been held, in this State, that, where a case has been tried in this court, and re-

manded with specific directions to dismiss the bill, or do some other act, the court below has no power to do anything but carry out the specific directions. * * * Had we, in the case, when it was before us, rendered a final decree dismissing the bill, no one would have claimed that the suit was pending thereafter, or that there had not been a final hearing or trial. And why? Because this court had considered the evidence as applied to the pleadings, and had fully determined the rights of the parties as presented by the case. And in what does the decree rendered in this court differ from a decree of dismissal? We, after fully considering the pleadings and evidence, decided that the complainant had not shown a right to the relief sought, and that the court below erred in not dismissing the bill, and then reversed the decree, and remanded the cause for further proceedings in conformity with the opinion. Under such specific directions, the court below could only act in conformity with the opinion and dismiss the bill. All the questions had been finally heard, tried
94 and decided on the appeal in this court. If the decree of this court did not finally determine the case and all of its parts, it is impossible for us to comprehend how a case can be finally heard and tried. To maintain this writ, or to permit other and further proceedings than those directed by this court, would be to hold that controversies could never be ended by judicial sentence or decree. The cause, then, having been finally heard and tried, and only remanded that the court below might dismiss the bill, and issue execution for costs, from that court, instead of this, we have no hesitation in saying that the court below could not have done otherwise than deny the petition and dismiss the bill."

In *Wadhams v. Gay*, 83 Ill. 250, it was held that, where a chancery cause is decided in this court upon the merits, the opinion finding that there is no equity in complainant's bill, and the cause is remanded for further proceedings in conformity with the opinion, it is the duty of the lower court to dismiss the bill for want of equity; in that case, when the cause was first presented to this court, this court entered a judgment that the decree of the superior court of Cook county be reversed, "and that this cause be remanded to the superior court of Cook county for further proceedings in conformity with the opinion of the court herein filed," etc.; and, in that case, this court, speaking through the late Mr. Justice Breese, said: "Here is a peremptory order for such proceedings, and such only, as shall be in conformity with the opinion filed. On the receipt of this mandate it was the duty of the superior court to examine the opinion and conform its action to it. * * * One of the great interests of the public is, that an end shall be put to litigation, and when a case has received full consideration in this court, and the merits fully explored, discussed and settled, and the cause remanded for further proceedings in conformity to the expressed views and opinion of this court, there can be no power remaining, in the court to which the opinion and mandate are sent, to retry the cause or do any other matter or thing in the cause, but to obey the mandate. The opinion of this court was on the merits—they had been declared,

by this court, against the complainants. The mandate required of the superior court the execution of the decree of this court, not a retrial of the cause or the entry of any order which might
95 have that effect, and which, unquestionably, was the design of the party asking such an order. The authorities are clear on this point."

The construction placed, in the cases of *Boggs v. Willard*, *supra*, and *Wadhams v. Gay*, *supra*, upon a judgment of this court reversing a judgment of the lower court and remanding the cause to the latter court for further proceedings "consistent with this opinion," or "not inconsistent with this opinion," or "in conformity with the views expressed in this opinion," was also given to the same form of judgment entered by this court in the following cases: *Newberry v. Blatchford*, 106 Ill. 584; *Hook v. Richeson*, 115 *id.* 431; *Gage v. Bailey*, 119 *id.* 539; *Parker v. Shannon*, 121 *id.* 452; *Gage v. Stokes*, 125 *id.* 40; *Buck v. Buck*, 119 *id.* 613; *West v. Douglas*, 145 *id.* 164; *Lynn v. Lynn*, 160 *id.* 307.

There is another line of cases, decided by this court, which hold that, even where a cause is remanded generally by a court of review, it is not again open in the lower court as to those questions presented by the record, and decided by the court of review. (*Village of Brooklyn v. Orthwein*, 140 Ill. 620; *Reed v. West*, 70 *id.* 479; *Rising v. Carr*, *id.* 596; *Ogden v. Larrabee*, *id.* 510; *Champaign County v. Reed*, 106 *id.* 389; *Loomis v. Cowen*, *id.* 660; *Smyth v. Neff*, 123 *id.* 310; *Tucker v. People*, 122 *id.* 583; *Berton v. Perry*, 146 *id.* 71; *Palmer v. Woods*, 149 *id.* 146.) In *Smyth v. Neff*, *supra*, it was held that, where a case is brought to this court and considered, its judgment as to all the points and questions presented and decided will forever preclude the parties, and, if the case is again brought before it for review, such questions cannot be reconsidered, and they will not be open for discussion.

In the light of the authorities above referred to, the judgment, entered by this court in the case of *People v. Theological Seminary*, *supra*, cannot be regarded otherwise than as final, so far as the question as to the exemption of the property here involved from taxation is concerned. If the appellant had reinstated the former case upon the docket in the county court, and again brought it to this court, the question, which we there determined, would not have been reconsidered, and would not have been open for discussion. Here, although the parties and subject-matter are the same as the parties and subject-matter in the former actions, yet the cause of action is different. Consequently, the material question here is,
96 what fact or matter was determined or adjudicated in the former actions, and such fact or matter may be shown by extrinsic evidence. Proof was introduced in this case to show what question was decided in the former actions, and proof has also been introduced to show what question was decided by the later judgment rendered by this court. It follows that the judgment rendered by this court, reversing the former judgment of the county court, in connection with the proof as to the question there involved, must be held to be an estoppel, as showing a former recovery or *res judicata*.

It would be singular indeed, if the party, who had obtained the decision of an important question before the court of last resort, and obtained that decision in such a way that the question involved was finally settled between the parties, could not receive any benefit from such decision in a subsequent litigation where the same question was sought to be again raised.

Counsel for appellant, however, relies upon the case of *Aurora City v. West*, 74 U. S. 82, as supporting the contention, that a reversal in a State court of last resort, remanding a case, cannot be set up as a bar to a judgment in an inferior court on the same case. But an examination of *Aurora City v. West*, *supra*, will show that the decision in that case is not applicable to the facts in the case at bar. There, the question came before the court upon a demurrer to a rejoinder, setting up merely that a judgment recovered in a county court of Indiana had been reversed by the supreme court of that State on appeal, and the cause remanded. The question there was whether, upon demurrer, a rejoinder was good, which merely set up a judgment of reversal, accompanied by remandment of the cause for further proceedings, without any allegation or proof, so far as we can ascertain from the case, to show what the particular question was which was decided by the supreme court of Indiana. In that case, the Supreme Court of the United States say: "The reversal of the judgment under the circumstances shown in the allegations of the rejoinder is not conclusive evidence that the complainants may not ultimately recover." But in the case at bar—where the proceeding, which is upon objections filed in the county court, is heard and determined in a summary manner without pleadings and judgment is pronounced as the right of the
97 case may be—a stipulation was entered into between the parties and appears in the record, which stipulation recites, "that appeal was taken by the said applicant to the supreme court of the State of Illinois, and that the supreme court of Illinois, June 18, 1898, filed the opinion of the court, as set forth in 174 Ill. at page 177, but that no mandate has been issued by the supreme court of Illinois, remanding such cause to the county court of Cook county, Illinois, and that no transcript of the order of the supreme court of Illinois, remanding the cause to the county court of Cook county has ever been filed in the county court of Cook county." It thus appears that the opinion of this court in *People v. Theological Seminary*, *supra*, is, by stipulation, made a part of the evidence in the case at bar. The case as here presented, therefore, shows upon its face the particular question decided by this court and is not merely a general allegation, that a judgment of reversal and remandment for further proceedings was entered. While it may be true that, as a general thing, a reversal remands nothing but its own correctness, and simply nullifies the former judgment or decree, declaring that it shall henceforth be void, yet, it may have a more extensive operation, either as a bar or as an estoppel, if it is shown that it directly affirms or denies some distinct fact in issue. (*Harvey v. Richards*, 2 Gallison, 216.) The judgment of reversal here is shown to directly

determine a distinct question which was in issue, and, therefore, it operates as a bar or estoppel.

Counsel for appellant lays great stress upon the fact, that no mandate was filed in the county court after the decision and judgment so as aforesaid rendered by this court. Section 84 of the practice act provides that "if neither party shall file such transcript within two years from the time of making the final order of the supreme court or appellate court, as the case may be, reversing any judgment or proceeding, the cause shall be considered as abandoned, and no further action shall be had therein." (3 Starr & Curt. Ann. Stat.—2d ed.—p. 3111.) It appears that, here, neither party, neither the present appellant nor the present appellee, filed any transcript within two years from the time of the rendition of the judgment of reversal by this court. But the only consequence of such failure to file a transcript by either party is, not that the cause of action is considered as abandoned, but only that the particular suit shall be considered as abandoned, and no further action shall be had therein.
98

But the fact, that the appellant did not file a transcript and redocket the case in the county court, and file additional objections, if he was entitled to do so, or take further proceedings in the court below, has no effect, and can have no effect upon the validity and finality of the judgment rendered by this court, so far as the question here involved was determined and settled by that judgment.

Our conclusion upon this branch of the case is, that the judgment of reversal rendered by this court, as shown in the case of *People v. Theological Seminary, supra*, operated as a bar and complete defense against the previous judgments rendered by the county court, and relied upon by the appellant herein.

Third. The appellant also contends that, while the judgments of the county court were outstanding holding that its lands were exempt from taxation, appellant received from charitable donors certain lands, and also purchased a certain amount of real estate; and that it acquired the title to these lands, so given to it and purchased by it, relying upon the construction given to its charter by these judgments of the county court holding its lands exempt from taxation. The doctrine, thus invoked by the appellant, applies only to decisions made by State courts of last resort, and not to decisions by inferior State courts. In construing the statutes and constitutions of the different States, the Supreme Court of the United States, as a general rule, adopts such construction as has been placed thereon by the last decision of the highest judicial tribunal of the State. To this ruling, however, there is a well-defined exception. Where, upon the faith of a decision of the highest tribunal of a State affirming the validity of contracts made or bonds issued under a certain statute, other contracts have been made or bonds issued under the same statute before the prior decision has been overruled, such contracts and bonds have been held to be valid upon the principle that the holders, upon purchasing such bonds, and the parties to such contracts, are entitled to rely upon the prior decision as settling the law of the State. (*Wade v. Travis County*, 174 U. S. 509.) In cases where the

rule has been applied, there had been two decisions of the highest tribunal of the State, the one sustaining the validity of the
99 bonds or contracts, and the other denying it; and where bonds had been purchased or vested rights had been acquired under the contract after the first decision and before the second, the Supreme Court of the United States, in passing upon the validity of the bonds or contracts, have said that they would not adopt the last decision of the supreme court of the State, but would adopt the first. This principle has no application to the case at bar, because, here, there was no decision of the highest tribunal of the State in favor of the contention here made by the appellant, but only a number of judgments rendered by an inferior tribunal in the State, to wit, the county court of Cook county.

Accordingly, for the reasons above stated the judgment of the county court is affirmed.

Judgment affirmed.

100 STATE OF ILLINOIS, } ss:
Supreme Court, }

I, Christopher Mamer, elected clerk of the supreme court, in and for the northern grand division of the State of Illinois, and keeper of the records and seal thereof, do hereby certify that the foregoing is a true copy of the opinion of the said supreme court in the above-entitled cause of record in my office.

This copy is not to operate as a mandate in any event. Mandate will be issued only on request and payment of costs.

In testimony whereof, I have set my hand and affixed the seal of the said supreme court at Springfield, this 8th day of June A. D. 1901.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

C. MAMER,
Clerk of the Supreme Court.

101 At a supreme court, begun and held at Ottawa, on Tuesday, the second day of April in the year of our Lord one thousand nine hundred and one, within and for the northern grand division of the State of Illinois.

Present: Carroll C. Boggs chief justice. Benjamin D. Magruder justice. Jacob W. Wilkin justice. —— —— justice. Joseph N. Carter justice. James H. Cartwright justice. John P. Hand justice. Howland J. Hamlin, attorney general. Charles M. Woods, sheriff.

CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to wit: on the 9th day of April A. D. 1901, the same being one of the days of the term of court aforesaid, the following proceedings were, by said court, had and entered of record, to wit:

THE BOARD OF DIRECTORS OF THE CHICAGO Theological Seminary
vs.
THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* Samuel B. Raymond, County Treasurer.
No. 1702. Appeal from County Court, Cook —.

Petition for Rehearing.

Now on this day this cause coming on to be heard upon the petition of the appellant for a rehearing herein, and the court being now duly advised in the premises: It is considered and ordered by the court that said petition for a rehearing be overruled and denied. And it is further ordered by the court that the order staying proceedings, heretofore entered herein, be now set aside and held for naught. And it is further considered by the court that said petitioner pay the costs and charges herein taxed.

102 And afterwards, to wit: on the 11th day of July A. D. 1901 there was filed in said court a certain petition and allowance thereof, in the words and figures following, viz:

In the Supreme Court of Illinois.

THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL Seminary, Appellant,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* SAMUEL B. Raymond, County Treasurer and *ex Officio* County Collector of Cook County, Illinois, Appellee.

To the Honorable Jacob W. Wilkin, chief justice of the supreme court of the State of Illinois:

Now comes the Board of Directors of the Chicago Theological Seminary, a corporation, by David Fales and John J. Herrick, its attorneys, and shows to the chief justice of the supreme court of the State of Illinois that, in the record and proceedings, and also in the rendition of the judgment in a suit between said The Board of Directors of the Chicago Theological Seminary, appellant, and The People of the State of Illinois *ex rel.* Samuel B. Raymond, county treasurer and *ex officio* county collector of Cook county, Illinois, appellee, lately pending in the supreme court of the State of Illinois, being the highest court of law or equity of the said State in which a decision could be had in said suit, and in which a final judgment was rendered against it on the ninth (9th) day of April, A. D., 1901, in said suit, as appears by the record now remaining in said supreme court of the State of Illinois, the validity of a statute of the State of Illinois, being the general revenue act of the State of Illinois, approved March 30 1872, and in force July 1, 1872, entitled: "An act for the assessment of property and

for the levy and collection of taxes," with its amendments,
103 was drawn in question in said suit by said The Board of Directors of the Chicago Theological Seminary, on the ground that said general revenue act of the State of Illinois impaired the obligation of the contract arising from the charter granted to the plaintiff in error by the State of Illinois, and was repugnant to the Constitution of the United States, and that the decision of said supreme court of Illinois was in favor of the validity of said statute; that in said suit the validity of the authority exercised by the officers of the State of Illinois under said general revenue act, in levying the taxes for which judgment was rendered in said suit and in rendering said judgment, was also drawn in question in said suit by said The Board of Directors of the Chicago Theological Seminary, on the ground that said authority exercised under said statute impaired the obligation of the contract arising from the charter granted to the plaintiff in error by the State of Illinois, and was repugnant to the Constitution of the United States, and that the decision of the supreme court of Illinois was in favor of the validity of said authority so exercised under said act; that certain rights and privileges were also claimed under the Constitution of the United States by said The Board of Directors of the Chicago Theological Seminary, and that said rights and privileges were specially set up and claimed under said Constitution, and that said supreme court of the State of Illinois erroneously decided against said rights of said The Board of Directors of said Chicago Theological Seminary;

From all of which the said The Board of Directors of the
104 Chicago Theological Seminary alleges that it appears in said record and proceedings in said suit, that manifest error has occurred, to the great damage of said The Board of Directors of the Chicago Theological Seminary;

Wherefore, said, The Board of Directors of the Chicago Theological Seminary prays an allowance of a writ of error from the Supreme Court of the United States to the supreme court of the State of Illinois, that the said record may be reviewed and the said error therein corrected, and speedy justice done in the premises, and that a citation may be issued herein pursuant to the law and according to the usual course and practice in such cases.

And your petitioner will ever pray.

DAVID FALES,
JOHN J. HERRICK,
Attorneys for Petitioner, The Board of Directors of the Chicago Theological Seminary.

The writ of error herein prayed for is hereby allowed this 27th day of June, A. D. 1901.

JACOB W. WILKIN,
Chief Justice of the Supreme Court of the State of Illinois.

105 And afterwards, to wit: on the 11th day of July A. D. 1901 there was filed in said court a certain bond in the words and figures following, viz:

Bond.

Know all men by these presents that we, the Board of Directors of the Chicago Theological Seminary, a corporation, as principal, and Edson J. Harkness, of Chicago, Illinois, as surety, are held and firmly bound unto the People of the State of Illinois, in the full and just sum of two thousand dollars, ($2,000), to be paid to the said People of the State of Illinois, for the payment of which well and truly to be made we the said Board of Directors of the Chicago Theological Seminary, for itself, its successors and assigns, and the said Edson J. Harkness, his heirs and personal representatives, bind ourselves personally and jointly and severally, firmly by these presents.

Sealed with our seals and dated the 27th day of June, in the year of our Lord one thousand nine hundred and one.

Whereas the above-named The Board of Directors of the Chicago Theological Seminary has prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in an action entitled "The Board of Directors of the Chicago Theological Seminary, appellant, *vs.* The People of the State of Illinois *ex rel.* Samuel B. Raymond, county treasurer and *ex officio* collector of Cook county, Illinois, appellee," against the said The Board of Directors of the Chicago Theological Seminary, by the supreme court of the State of Illinois, in a suit lately pending in said court between said The Board of Directors of the Chicago Theological Seminary as appellant and the said The People of the State of Illinois, *ex rel.*, etc., appellees;

Now therefore the condition of this obligation is such that if the above-named The Board of Directors of the Chicago Theological Seminary, shall prosecute its writ of error to effect and answer all damages and costs if it fail to make good its plea, then the
106 above obligation to be void, otherwise to remain in full force and virtue.

THE BOARD OF DIRECTORS OF THE
CHICAGO THEOLOGICAL SEMINARY,
By DAVID FALES, *Vice-Chairman.*
EDSON J. H..RKNESS. [SEAL.]

Attest: GEORGE S. F. SAVAGE, *Secretary.*

Approved by chief justice of the supreme court of the State of Illinois.

JACOB W. WILKIN,
Chief Justice of the Sup. Court of the State of Illinois.

107 In the Supreme Court of Illinois.

THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL Seminary, Appellant,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* SAMUEL B. Raymond, County Treasurer and *ex Officio* County Collector of Cook County, Illinois, Appellee.

I do hereby certify that in the above-entitled cause there was drawn in question in said supreme court of the State of Illinois, the validity of a statute of the State of Illinois, being the general revenue act of the State of Illinois, approved March 30, 1872, and in force July 1, 1872, entitled: "An act for the assessment of property and for the levy and collection of taxes," with its amendments on the ground that said general revenue act of the State of Illinois impaired the obligation of the contract arising from the charter granted to said The Board of Directors of the Chicago Theological Seminary, the appellant, by the State of Illinois, and was repugnant to the Constitution of the United States, and that the decision of said supreme court of Illinois was in favor of the validity of said statute.

JACOB W. WILKIN,
Chief Justice of the Supreme Court of the State of Illinois.

[Endorsed:] Board of Directors, &c., *vs.* People *ex rel.* Certificate of chief justice.

108 In the Supreme Court of the United States.

THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL Seminary, Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* SAMUEL B. Raymond, County Treasurer and *ex Officio* County Collector of Cook County, Illinois, Defendant in Error.

Assignment of Errors.

And now comes the plaintiff in error, The Board of Directors of the Chicago Theological Seminary, by David Fales and John J. Herrick, its attorneys, and says that in the record and proceedings in the above-entitled cause, there is manifest error in this, to wit:

I.

That by clause 5 of the charter of plaintiff in error, granted to it by the State of Illinois, all property of every kind and description of the plaintiff in error was exempt from all taxes of every kind and description, and that the general revenue act of the State of Illinois, approved March 30, 1872, and in force July 1, 1872, entitled: "An act for the assessment of property and for the levy and collection of taxes," with its amendments, under which the said judgment of said

county court against the lands of the plaintiff in error was rendered, was an impairment of the obligation of the contract between the State of Illinois and this plaintiff in error, arising from said charter, and that the said general revenue act of the State of Illinois
109 violated clause 1, section 10, article 1, of the Constitution of the United States, and that by reason thereof, said supreme court of Illinois erred in rendering judgment against the plaintiff in error.

II.

That by clause 5 of the charter of plaintiff in error, granted to it by the State of Illinois, all property of every kind and description of the plaintiff in error was exempt from all taxes of every kind and description, and that the general revenue act of the State of Illinois, approved March 30, 1872, and in force July 1, 1872, entitled: "An act for the assessment of property and for the levy and collection of taxes," under which the said judgment of said county court against the lands of the plaintiff in error was rendered, was an impairment of the obligation of the contract between the State of Illinois and this plaintiff in error, arising from said charter, and that the said general revenue act of the State of Illinois violated clause 1, section 10, article 1, of the Constitution of the United States, and that by reason thereof said supreme court of Illinois erred in rendering judgment against the plaintiff in error.

III.

That the said supreme court of Illinois erred in not holding that the charter of the said plaintiff in error, granted to it by the State of Illinois, exempted from taxation, under the laws of the State of Illinois, the property of the plaintiff in error, against which judgment was rendered by the county court of Cook county in said cause, and that, by reason thereof, the general revenue act of the State of Illinois, approved March 30, 1872, and in force July 1, 1872, entitled: "An act for the assessment of property and for the levy and collection of taxes," with its amendments, under which the taxes for which said judgment was rendered were levied, and the
110 action of the officers of the State of Illinois thereunder, impaired the obligation of the contract between the State of Illinois and the plaintiff in error arising from the charter granted to the plaintiff in error by the State of Illinois, and was thereby repugnant to the Constitution of the United States, and in not reversing said judgment of the county — of Cook county.

IV.

That the said supreme court of Illinois erred in not holding that the charter of the said plaintiff in error, granted to it by the State of Illinois, exempted from taxation, under the laws of the State of Illinois, the property of the plaintiff in error, against which judgment was rendered by the county court of Cook county in said cause, and that, by reason thereof, the general revenue act of the State of Illinois, approved March 30, 1872, and in force July 1, 1872, en-

titled: "An act for the assessment of property and for the levy and collection of taxes," under which the taxes for which said judgment was rendered were levied, and the action of the officers of the State of Illinois thereunder, impaired the obligation of the contract between the State of Illinois and the plaintiff in error arising from the charter granted to the plaintiff in error by the State of Illinois, and was thereby repugnant to the Constitution of the United States, and in not reversing said judgment of the county court of Cook county.

V.

That said general revenue act of the State of Illinois, as in force at the date of the levy of the taxes for which judgment was rendered in said suit in the county court of Cook county, Illinois, and of said judgment, and the action of the officers of the State of Illinois thereunder in levying said taxes, and in rendering said judgment,
111 were in violation of the rights of the plaintiff in error under its charter granted to it by the State of Illinois, and impaired the obligation of the contract arising therefrom, and, were repugnant to the Constitution of the United States, and that by reason thereof the supreme court of Illinois erred in not reversing the judgment against the plaintiff in error entered by the county court of Cook county.

VI.

That said supreme court of Illinois erred in deciding that the charter of the plaintiff in error did not exempt from taxation, under the revenue law of Illinois, the property of plaintiff in error, against which judgment was rendered by the county court of Cook county, Illinois, in said suit, and that said general revenue act of the State of Illinois, under which such judgment was rendered, did not impair the obligation of said contract arising from said charter, and was not repugnant to the Constitution of the United States.

VII.

That the general revenue act of the State of Illinois approved March 30, 1872, and in force July 1, 1872, entitled: "An act for the assessment of property and for the levy and collection of taxes," as amended and in force at the date of the levy of the taxes for which the judgment of the county court of Cook county, Illinois, in said cause was rendered against the lands of plaintiff in error in this proceeding, and of said judgment of said county court, and the action of the officers of the State of Illinois thereunder, impaired the obligation of the contract between the State of Illinois and the plaintiff in error, arising from section 5 of the charter of plaintiff in error granted to it by the State of Illinois, and was repugnant to clause 1, section
112 10, article 1, of the Constitution of the United States, and that, by reason thereof, the supreme court of Illinois erred in rendering judgment against the plaintiff in error and in not reversing the judgment of the county court of Cook county against the plaintiff in error.

VIII.

That the said general revenue act of the State of Illinois, approved March 30, 1872, and in force July 1, 1872, entitled: "An act for the assessment of property and for the levy and collection of taxes," with its amendments, and the different steps taken thereunder to impose the taxes on the lands of plaintiff in error, for which judgment was rendered by said county court of Cook county, impaired the obligation of the contract between the State of Illinois and this plaintiff in error arising from the charter granted this plaintiff in error by the State of Illinois, and were and are in violation of clause 1, section 10, article 1 of the Constitution of the United States, and that, by reason thereof, the supreme court of Illinois erred in rendering judgment against the plaintiff in error and in not reversing the judgment of the county court of Cook county.

IX.

That the supreme court of Illinois erred in not holding that the general revenue act of the State of Illinois, approved March 30, 1872, and in force July 1, 1872, entitled "An act for the assessment of property and for the levy and collection of taxes," with its amendments, under which the judgment of said county court of Cook county, against the lands of the plaintiff in error was rendered, was an
113 impairment of the obligation of the contract between the State of Illinois and this plaintiff in error, contained in clause 5 of the charter of plaintiff in error, granted to it by the State of Illinois, and for that reason repugnant to the Constitution of the United States, and in not reversing said judgment of said county court of Cook county because of said error.

X.

That the supreme court of Illinois erred in not reversing the judgment of the county court of Cook county, in favor of the defendant in error and against the plaintiff in error.

XI.

That said supreme court of Illinois erred in rendering judgment in favor of said defendant in error.

Wherefore, the plaintiff in error, The Board of Directors of the Chicago Theological Seminary, prays that the judgment of said supreme court of Illinois may be reversed by this honorable court.

DAVID FALES,
JOHN J. HERRICK,
Attorneys for Plaintiff in Error.

Endorsed on cover: File No. 18,233. Illinois supreme court. Term No. 140. The Board of Directors of the Chicago Theological Seminary, plaintiff in error, *vs.* The People of the State of Illinois *ex rel.* Samuel B. Raymond, county treasurer and *ex officio* collector of Cook county, Illinois. Filed July 22, 1901.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 285.

THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL SEMINARY, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS *EX REL.* SAMUEL B. RAYMOND, COUNTY TREASURER AND *EX OFFICIO* COUNTY COLLECTOR OF COOK COUNTY, ILLINOIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED MARCH 8, 1902.

(18,439.)

(18,439.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 265.

THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL SEMINARY, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS *EX REL.* SAMUEL B. RAYMOND, COUNTY TREASURER AND *EX OFFICIO* COUNTY COLLECTOR OF COOK COUNTY, ILLINOIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 24, 1902.

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a UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable the judges of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Illinois before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in said suit, between The Board of Directors of the Chicago Theological Seminary, appellant, and The People of the State of Illinois *ex rel.* Samuel B. Raymond, county treasurer and *ex officio* county collector of Cook county, Illinois, appellee, wherein the validity of the statute of the State of Illinois, being the general revenue act of the State of Illinois, approved March 30, 1872, and in force July 1, 1872, entitled "An act for the assessment of property and for the levy and collection of taxes" with its amendments, was drawn in question in said suit by said The Board of Directors of the Chicago Theological Seminary, on the ground that the said general revenue act of the State of Illinois impaired the obligation of the contract arising from the charter granted to the plaintiff in error by the State of Illinois, and was repugnant to the Constitution of the United States, and the decision of said supreme court of Illinois was in favor of the validity of said statute; and in said suit the validity of the authority exercised by the officers of the State of Illinois under said general revenue act, in levying the taxes for which judgment was rendered in said suit and in rendering said judgment, was also drawn in question in said suit by said The Board of Directors of the Chicago Theological Seminary on the ground that said authority exercised under said statute impaired the obligation of the contract arising from the charter granted to the plaintiff in error by the State of Illinois, and was repugnant to the Constitution of the United States, and

b the decision of the supreme court of Illinois was in favor of the validity of said authority so exercised under said act; and certain rights and privileges were also claimed under the Constitution of the United States by said The Board of Directors of the Chicago Theological Seminary, and said rights and privileges were specially set up and claimed under said Constitution, and said supreme court of the State of Illinois erroneously decided against said rights of the said The Board of Directors of said Chicago Theological Seminary;

From all of which the said The Board of Directors of the Chicago Theological Seminary alleges that it appears in said record and proceedings in said suit, that manifest error has occurred, to the great damage of said The Board of Directors of the Chicago Theological Seminary;

We being willing that the error if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and

proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington within 30 days from the date hereof, in the said Supreme Court to be then and there held, that the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States the fifth day of February in the year of our Lord one thousand nine hundred and two, and of our Independence the one hundred and twenty-sixth year.

The Seal of the Circuit Court of the United States for the South'n Dist. Ill.

JAMES T. JONES,
Clerk of the Circuit Court of the United States for the Southern District of Illinois.

[Endorsed:] Writ of error.

c In the Supreme Court of Illinois.

THE BOARD OF DIRECTORS OF THE CHICAGO Theological Seminary, Appellant,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* Samuel B. Raymond, County Treasurer and *ex Officio* County Collector of Cook County, Illinois, Appellee.

Appeal from the County Court of Cook County.

I, Christopher Mamer, clerk of the supreme court of the State of Illinois, elected in and for the northern grand division thereof, and keeper of the files and records thereof, do hereby certify that on the fifth day of February, in the year of our Lord one thousand nine hundred and two (A. D. 1902), a copy of the foregoing writ of error for the defendant in error was lodged in my office at Springfield, Illinois.

In testimony whereof, I have hereunto set my hand and caused the seal of the said supreme court of the State of Illinois to be hereunto affixed, at Springfield, in said State, this 10th day of February, A. D. 1902.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of said Supreme Court, as Aforesaid.

d UNITED STATES OF AMERICA, ss:

To the People of the State of Illinois *ex rel.* Samuel B. Raymond, county treasurer and *ex officio* county collector of Cook county, Illinois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois, wherein The Board of Directors of the Chicago Theological Seminary is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Jacob W. Wilkin, chief justice of the supreme court of the State of Illinois, this 5th day of February, in the year of our Lord one thousand nine hundred and two.

JACOB W. WILKIN,
Chief Justice of the Supreme Court of the State of Illinois.

We hereby acknowledge due service of the above citation.

EDWIN W. SIMS,
FRANK L. SHEPARD,
WILLIAM F. STRUCKMANN,
Attorneys for the People of the State of Illinois ex Rel., etc., the Appellee in said Cause in the Supreme Court of Illinois.

e In the Supreme Court of Illinois.

THE BOARD OF DIRECTORS OF THE CHICAGO Theological Seminary, Appellant, *vs.* THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* Samuel B. Raymond, County Treasurer and *ex Officio* County Collector of Cook County, Illinois, Appellee.	Appeal from the County Court of Cook County.

I, Christopher Mamer, clerk of the supreme court of the State of Illinois, elected in and for the northern grand division thereof, and keeper of the files and records thereof, do hereby certify that on the 10th day of February, in the year of our Lord one thousand nine hundred and two (A. D. 1902), a copy of the foregoing citation and acknowledgement of service thereof was lodged in my office at Springfield, Illinois.

In testimony whereof, I have hereunto set my hand and caused the seal of the said supreme court of the State of Illinois to be hereunto affixed, at Springfield, in said State, this 10th day of February, A. D. 1902.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of said Supreme Court, as Aforesaid.

f In the Supreme Court of Illinois.

THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL SEMINARY, Appellant, *vs.* THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* Samuel B. Raymond, County Treasurer and *ex Officio* County Collector of Cook County, Illinois, Appellee.	Appeal from the County Court of Cook County.

I, Christopher Mamer, clerk of the supreme court of the State of Illinois, elected in and for the northern grand division thereof, and keeper of the files and records thereof, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered consecutively from one (1) to forty-eight (48), inclusive, contain a true and complete transcript and copy of the record and proceedings had in said court in the cause which is above entitled, and of the whole thereof, including the opinion of the court filed in said cause and the certificate of the chief justice of said court, as all the above now remain of record and on file in my said office. Pages numbered 49 to 55, inclusive, include the errors assigned upon said record.

In testimony whereof, I have hereunto set my hand and caused the seal of the said supreme court of the State of Illinois to be hereunto affixed, at Springfield, in said State, this 10th day of February, A. D. 1902.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of said Supreme Court, as Aforesaid.

1 At a supreme court, begun and held at Springfield on Tuesday, the first day of October in the year of our Lord one thousand nine hundred one, within and for the State of Illinois.

Present: Jacob W. Wilkin, chief justice, Benjamin D. Magruder, justice, James H. Cartwright, justice, John P. Hand, justice, Joseph N. Carter, justice, Carroll C. Boggs, justice, James B. Ricks, justice. Howland J. Hamlin, attorney general. Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, that heretofore to wit: on the twenty-fifth day of September, A. D. 1901, there was filed in the office of the clerk of said court a certain transcript of the record and proceedings of the county court of Cook county in a cause entitled in this court The Board of Directors of the Chicago Theological Seminary, a corporation, etc. *vs.* The People of the State of Illinois, *ex rel.* Samuel B. Raymond, county treasurer and *ex officio* county collector of Cook county, which said transcript is in the words and figures following, viz:

2 UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss.:
County of Cook, }

Pleas before the Honorable Richard S. Farren, county judge of Lee county, presiding as judge of the county court of Cook county at the request and in the absence of the Honorable Orrin N. Carter, sole presiding judge of the county court of Cook county, in the State of Illinois, at a regular term of said county court of Cook county begun and holden at the court-house, in the city of Chicago, in said county and State, on the second Monday, being the 8th day, of July, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States of America the one hundred and twenty-sixth.

Present: The Honorable Richard S. Farren acting judge of the county court of Cook county. Ernest J. Magerstadt, sheriff of Cook county.

Attest: PHILIP KNOPF, *Clerk*.

Be it remembered that heretofore, to wit: on the 8th day of July in the year of our Lord one thousand nine hundred and one the same being one of the days of the July term of the county court of Cook county, the following certificate of publication was filed with the clerk of said court in words and figures as follows to wit:

Office of the county treasurer and *ex officio* county collector of Cook county, Illinois.

CHICAGO, *June 14th*, 1901.

The following is a list of delinquent lands and lots in the county of Cook and State of Illinois upon which remain due and unpaid the taxes levied and assessed for the year 1900, and upon which remain due and unpaid the amounts for which said lands and lots have been previously forfeited to the State of Illinois (where any such forfeitures are noted) and which remained unpaid on the first day of

3 November A. D. 1900, and interest and printers' fees added to said amounts as required by law, and upon which also remain due and unpaid back taxes for the year 1899 and prior years added (where the same are specifically set forth) together with the interest and printers' fees thereon if any contained and set forth in the collector's books with the warrants attached thereto issued by the county clerk of said county for the year 1900 which now remain due and unpaid and the total amount due and unpaid on each tract of land or lot and the taxes for the year 1900 due and unpaid bear interest from the 1st of May 1901 at the rate of 1 per cent. per month until paid or forfeited, parts or fractions of a month being reckoned as a month.

Explanatory.—In this list in all places where no other notation is made the figures in the column headed "$" (meaning dollars) and "cts." (meaning cents) represent the taxes due and unpaid for

the year 1900. When the letters "for." are placed to the left of the figures in this column they are intended for an abbreviation of the word "forfeiture" and denote that the amounts set down to the right of the same are the amounts due on said lands and lots previously forfeited to the State and remaining due and unpaid on the 1st day of November, A. D. 1900. When back taxes are extended the year for which such taxes are due is placed to the left of the amount.

4 Canal trustees' subdiv. of sec. 7, T. 39, R. 14:

	Lot.	Bl'k.	
Ch'go Theo. Seminary	10	11	
E. ½	11	"	35.10

Subdivision of lots 5 & 6, S. bl'k 3, bl'k 50:

	Sublot.		
Ch'go Theo. Seminary	1		
	2		
	3		
	4	...	487.34

Ashland 2nd add'n to Chicago in sec. 18, T. 39, R. 14:

	Sublot.	Lot.	Bl'k.	
J. K. Pearsons	1	4	16	89.45

Bronson's add'n to Chicago, assessors' divi. of lots 9 and 10:

	Sublot.		
Ch'go Theo. Seminary	1	...	712.27

James W. Scoville's subdiv. of W. ½ N. E. ¼, sec. 7, T. 39, R. 13, subdivision of lot 23:

	Sublot.		
C. Scoville	16	...	18.56
"	17	...	8.09
"	19	...	8.09
Ch'go Theo. Seminary	20		
	21	...	26.50
J. Scoville	23	...	8.09
Ch'go Theo. Seminary	24	...	19.68
C. Scoville	25	...	8.09
"	26	...	8.09

Maywood, being a subdiv. of S. ½ S. W. ¼, sec. 2, T. 39, R. 12; W. ½ sec. 11, T. 39, R. 12; S. W. ¼ sec. 14, T. 39, R. 12:

	Lot.	Bl'k.	
Mead & Co.	23	206	3.22
"	24	"	3.22
"	25	"	3.22
"	26	"	3.22
"	27	"	3.22

Ch'go Theo. Seminary:

E. 10 acres, S. 30 acres, W. ½ N. W. ¼, sec. 28, T. 40, R. 13. 50.65

5 Western add'n, a subdiv. of W. ½ S. E. ¼, sec. 15, T. 39, R. 12:

	Lot.	Bl'k.	
F. E. Ballard	1	1	.72
"	2	"	.56
"	3	"	.56

Chytrau's add'n to Argyle, S. W. ¼, sec. 8, T. 40, R. 14, being S. 23 acres of N. 47 acres E. of Green Bay road, and lots 1 to 16 of A. J. Brown's subdiv. of S. W. ¼ subdivision of lot 44, Brown's 2nd add'n to Argyle, and bl'k 6:

	Lot.		
G. W. Bennett	12	...	16.15

Bradish & Mizner's addition to Riverside, being a subdiv. of E. ½ N. E. ¼, sec. 24, T. 39, R. 12:

	Lot.	Bl'k.	
Ch'go Theo. Seminary	19	16	1.43
"	20	"	1.43

Canal trustees' subdiv. of sec. 7, T. 39, R. 14; assessors' divi. of part of lot 2 and all of lots 3 to sublot:

	Lot.	Bl'k.	
Ch'go Theo. Seminary E. 19.43 ft. 4	7 "	64 "	76.96

Bickerdike's addition to Chicago:

	Lots.	Bl'k.	
Ch'go Theo. Seminary	32 to 36	20	116.18

Union Park addition to Chicago:

	Lot.	Bl'k.	
W. A. Wells	16	...	
"	17	...	
"	18	...	
"	19	1	1541.06

Circuit Court part'n S. W. ¼, sec. 8, T. 39, R. 14, Eastman's subd'n of part of lots 7 and 8:

	Sublot.		
Ch'go Theo. Seminary	2	...	76.05
"	5	...	
" (private alley S. and adj.)	5	...	76.05

6 Ashland 2nd add'n to Chicago, assessors' divi. of lots 12 to 16, bl'k 9:

	Sublot.			
Ch'go Theo. Seminary.....	4	...		37.86

School Section add'n to Chicago:

	Sublot.	Lot.	Bl'k.	
Cent Steam Laundry.....	6	3	...	
	7	to	...	
	8	4	26	611.92

Public notice is hereby given that the undersigned county treasurer and *ex officio* county collector of Cook county State of Illinois will apply to the county court of said county at the July term thereof, to commence on the second Monday in July, A. D. 1901, being the eighth (8th) day of July, A. D. 1901, for judgment against the delinquent lands lots and real estate described in the preceding list for taxes for the year 1900 and interest and costs due thereon and for the amounts for which said lands lots and real estate had been forfeited to the State of Illinois for the taxes previous to the first day of November A. D. 1900 and remaining due and unpaid on the said 1st day of November together with interest and costs due thereon and for back taxes for the year 1899 and prior year- added and the interest and costs due thereon and for an order to sell said lands lots and real estate for the satisfaction thereof and also that on the fourth Monday next succeeding the second Monday in July A. D. 1901 being the fifth (5th) day of August A. D. 1901 at the hour of 9 o'clock a. m. all the lands lots and real estate described in said list against which judgment shall have been rendered and for the sale of which an order shall have been made, will be exposed to public sale at the county building where the county court is held in said county situate on Clark street between Randolph and Washington streets in the city of Chicago in said county of Cook for the amount of taxes interest and costs due thereon respectively.

7 Dated Chicago, June 14th, 1901.

S. B. RAYMOND,
County Treasurer and ex Officio County Collector of Cook County, Illinois.

STATE OF ILLINOIS, } ss:
Cook County, }

I, Wm. Penn Nixon, being first duly affirmed depose and say, that I am the publisher of the Daily Inter-Ocean, and that the foregoing list of lands and lots contained in the newspaper known as the Daily Inter-Ocean, to which this certificate is attached is a list of the delinquent lands and lots upon which remains due and unpaid the taxes levied and assessed for the year 1900 (and prior years), together with the amounts for which said lands had been previously forfeited to the State of Illinois (when such forfeitures are noted) and which remain due and unpaid on the first day of November A. D. 1900; and

also a list of delinquent lands and lots upon which remains due and unpaid special assessments and special taxes levied and assessed by the following corporate authorities, viz: "The Village of Barrington" "The Village of Blue Island" "The Town of Cicero" "The Village of Chicago Heights" "The Village of Desplaines" "The City of Evanston" "The Village of Glencoe" "The Village of Grossdale" "The Village of Harlem" "The City of Harvey" "The Village of La Grange" "The Village of La Grange Park" "The Village of Maywood" "The Village of Melrose Park" "The Village of Morgan Park" "The Village of Palatine" "The Village of Park Ridge" "The Village of Riverside" "The Village of River Forest" "The Village of Steger" "The Village of Western Springs" "The Village of Wilmette" "The City of Chicago" "The Board of South Park Commissioners" "The Board of West Park Commissioners" "The Ridge Avenue Park District" "The Town of Lake View" "The Bremen Drainage District No. 1" "The Orland Drainage
8 District No. 4" with notices hereto attached, and that the same were duly published and advertised pursuant to law, once in the Daily Inter-Ocean, a newspaper printed and published in the county of Cook and State of Illinois and the whole of said advertisement was contained in one edition of said newspaper said newspaper being a newspaper of general circulation throughout said county, and that the date of the newspaper containing the same was the 14th day of June A. D. 1901.

In witness whereof, I have hereunto set my hand and seal this 20th day of June A. D. 1901.

WM. PENN NIXON, *Publisher.*

Subscribed declared and affirmed to before me this 20th day of June A. D. 1901.

[SEAL.]

FRED W. UHL,
Notary Public.

9 UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
County of Cook, }

Pleas before the Honorable Orrin N. Carter, sole presiding judge of the county court of Cook county, in the State of Illinois, at a regular term of said county court of Cook county began and holden at the court-house, in the city of Chicago, in said county and State, on the second Monday, being the eight- day, of July, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States of America the one hundred and twenty-sixth.

Court opened by proclamation

Present thereat the Honorable Orrin N. Carter judge of the county court of Cook county. Charles S. Deneen State's attorney. Ernest J. Magerstadt sheriff of Cook county.

Attest: PHILIP KNOPF,
Clerk of the County Court of Cook County.

In the matter of the application of SAMUEL B. RAYMOND, county treasurer and *ex officio* collector of the revenue of Cook county, in the State of Illinois, for judgment for delinquent State, county, town, school, road, city, village, park, drainage, assessment and corporation taxes, and assessments levied and assessed upon the lands and lots in the county of Cook, in the State of Illinois, for the year 1900, and for the due and unpaid back taxes of 1899 and prior years added, and for forfeitures to the State, together with interest, printers' fees, and costs due and unpaid thereon.

10 And now on this eight (8) day of July A. D. 1901 comes into court Samuel B. Raymond county treasurer and *ex officio* collector of the revenue of Cook county, in the State of Illinois, by Charles S. Deneen State's attorney, in behalf of the People of the State of Illinois, and by Edwin W. Sims county attorney of Cook county, and by Charles M. Walker corporation counsel of the city of Chicago in said county and by the attorneys respectively of the various boards of park commissioners in said county, and applies for judgment for the delinquent State, county, town, school, road, city, village, park, drainage assessment and corporation taxes and assessments, levied and assessed upon the lands and lots in the county of Cook in the State of Illinois for the year 1900 and for the due and unpaid back taxes of 1899, and prior years added, and for forfeitures to the State, together with interest printers' fees and costs due and unpaid thereon, the record of the delinquent list of said delinquent taxes, assessments, forfeitures, back taxes, interest, printers' fees and costs being contained and fully set forth in ninety-two (92) volumes numbered one (1) to ninety-two (92) inclusive and hereinafter following and it appearing to the court and the court finding from evidence here adduced that due notice as required by law has been given of this application for judgment and of the time and place thereof. Thereupon on motion of said Samuel B. Raymond by his attorney respectively as hereinabove set out.

It is ordered by the court that any and all parties desiring to object to the rendition of judgment herein file their objections in writing on or before 10 a. m. Wednesday July 10th A. D. 1901.

11 The following is a list of delinquent lands and lots in the county of Cook and State of Illinois upon which remain due and unpaid the taxes and special assessments levied and assessed for the year 1900, and upon which remain due and unpaid the amounts for which said lands and lots had been previously forfeited to the State of Illinois and which remained unpaid on the first day of November A. D. 1900 and interest and printers' fees added to said amounts as required by law and upon which also remain due and unpaid back taxes of 1899, and prior years added embracing the delinquent taxes and special assessments together with the interest and printers' fees thereon, if any, contained and set forth in the collector's books with the warrant for the collection of the same attached thereto issued by the county clerk of said county for the year

1900, which now remain due and unpaid and showing the names of the owners thereof so far as known, the proper description of the lands and lots the valuation on which the tax is extended the amounts of the consolidated and other taxes and special assessments for the year 1900, the amount for which said lands and lots had been previously forfeited to the State of Illinois, with interest and printers' fees added, the amount of the back taxes interest and other costs, if any, against each parcel of land or lot respectively and the due and unpaid taxes for the year, 1900, bear interest from the first day of May 1901, at the rate of one per cent. per month until paid or forfeited parts or fractions of a month are reckoned as a month, all of which taxes and special assessments so levied and assessed for said years and hereinafter set forth and enumerated and interest, and printers' fees and other costs due thereon respectively S. B. Raymond county treasurer and *ex officio* county collector of said county has been unable to collect, and which said list is this day reported to the county clerk of said county and duly filed.

Owner's name.	Description.							Valuation as equalized by State board of equalization.	Amount of consolidated and other taxes levied for year 189-.	Total tax.	Amount of interest under section 177, revenue law, to date of judgment.	Costs up to and including entry of judgment.	Total amount of judgment.
	Section.	Town.	Range.	Lot.	Sublot.	Lot.	Block.						
								Dollars.	*Dollars. Cts.*	*Dollars. Cts.*	*Dollars. Cts.*	*Cts.*	*Dollars. Cts.*
Western add'n subd'n of W. ½ S. E. ¼	15	39	12										
F. E. Ballard						1	1	12	72	72	02	18	92
" " "						2	"	9	56	56	02	18	76
" " "						3	"	9	56	56	02	18	76
Bradish & Mizner's add'n to Riverside, being a subd'n of E. ½ N. E. ¼	24	39	12										
Ch'go Theo. Seminary						19	16	18	1 43	1 43	04	18	1 65
" " "						20	"	18	1 43	1 43	04	18	1 65
Maywood, being a sub. in	2, 11, 14	39	12										
A. B. Mead & Co						23	206	37	3 22	3 22	10	18	3 50
" " "						24	"	37	3 22	3 22	10	18	3 50
" " "						25	"	37	3 22	3 22	10	18	3 50
" " "						26	"	37	3 22	3 22	10	18	3 50
" " "						27	"	37	3 22	3 22	10	18	3 50
James W. Scoville's subd'n of W. ½ N. E. ¼	7	39	13										
Subd'n of							23						
C. B. Scoville						16	"	177	18 56	18 56	56	18	19 30
" "						17	"	77	8 09	8 09	24	18	8 51
" "						19	"	77	8 09	8 09	24	18	8 51
Ch'go Theo. Seminary						20	"	253	26 50	26 50	80	36	27 66
" " "						21	"						
J. W. Scoville						23	"	77	8 09	8 09	24	18	8 51
Ch'go Theo. Seminary						24	"	188	19 68	19 68	59	18	20 45
C. B. Scoville						25		77	8 09	8 09	24	18	8 51
" "						26		77	8 09	8 09	24	18	8 51
Ch'go Theo. Seminary E. 10 acs. S. 30 acs. W. ¼ S. W. ¼	28	40	13					654	50 65	50 65	1 52	18	52 35
Bikerdike's add'n to Chicago						32 to 36	29 "	1256	116 18	116 18	3 49	28	119 95
Ch'go Theo. Seminary.													

Ch'go Theo. Seminary E. ⅓								46	380	35 16	35 16		
Ch'go Theo. Seminary				Sublot 1, 2, 3, 4	Lot 5 and 6	3	50 "	5270	487 34	487 34	14 62	72	502 68
Assessors' div'n of part lot 2 and all of					Lot 3 to 7	64							
Ch'go Theo. Seminary E. 19.43 ft				Sublot 4	"	"		832	76 96	76 96	2 31	18	79 45
Union Park add'n to Chicago:													
W. A. & A. E. Wells					16	1 "							
" " " "					17	"		16665	1541 06	1541 06	43 26	72	1588 01
" " " "					18	"							
" " " "					19	"							
Circuit court partition of S. W. ¼	8	39	14										
Eastman's subd'n of part of					7 and 8								
Ch'go Theo. Seminary				Sublot 2	"			411	76 05	76 05	2 28	18	78 51
" " " private alley S. and adj				5	"			822	76 05	76 05	2 28	18	78 51
" " "				5	"								
School Section add'n to Chicago:													
Cent. Steam Laundry				6	3 and 4	26		6617	611 92	611 92	18 36	54	630 82
" " "				7	"	"							
				8	"	"							
Chytraus add'n to Argyle in S. W. ¼ Subd'n of L. 44 Brown's 2nd add'n to Argyle and	8	40	14		12	6 "		199	16 15	16 15	48	18	16 81
Geo. W. Barnett													
Ashland 2nd addition to Chicago in	18	39	14	1	1 to 4	16		967	89 45	89 45	2 68	18	92 31
J. H. Pearson													
Assessors' division of					12 to 16	9							
Ch'go Theo. Seminary				4	"	"		469	37 86	37 86	1 14	18	39 18
Bronson's add'n to Chicago:													
Assessors' div'n of						9 & 10							
Ch'go Theo. Seminary					1	"		8078	712 27	712 27	21 37	18	733 82

13 STATE OF ILLINOIS, } ss:
County of Cook, }

I, S. B. Raymond collector of the county of Cook do solemnly swear that the foregoing is a true and correct list of the delinquent lands and lots within the county of Cook upon which I have been unable to collect the taxes and special assessments, interest and printers' fees charged thereon as required by law for the year or years therein set forth, that said taxes remain due and unpaid as I verily believe.

S. B. RAYMOND,
Collector of Cook County, Illinois.

Subscribed and sworn to before me this eight (8) day of July A. D. 1901.

PHILIP KNOPF,
[SEAL.] *Clerk of the County Court of Cook County, Illinois.*

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
County of Cook, }

Pleas before the Honorable Orrin N. Carter, sole presiding judge of the county court of Cook county, in the State of Illinois, at a regular term of said county court of Cook county began and holden at the court-house, in the city of Chicago, in said county and State, on the second Monday, being the eight day, of July, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States of America the one hundred and twenty-sixth.

Court opened by proclamation.

14 Present thereat the Honorable Orrin N. Carter judge of the county court of Cook county. Charles S. Deneen State's attorney. Ernest J. Magerstadt sheriff of Cook county.

Attest: PHILIP KNOPF,
Clerk of the County Court of Cook County.

In the matter of the application of SAMUEL B. RAYMOND, county treasurer and *ex officio* collector of the revenue of county of Cook, in the State of Illinois, for judgment and order of sale on delinquent taxes and special assessments levied and assessed for the year 1900 and prior years.

And now to wit: on this day, the eight day of July, in the year of our Lord one thousand nine hundred and one, the same being one of the days of the July term A. D. 1901, of this court, again comes the said Samuel B. Raymond county treasurer and *ex officio* county collector of the revenue of Cook county, by Edwin W. Sims, county attorney, and moves the court for judgment and order of sale against the lands and lots contained in the *following* list, said list comprising volumes one (1) to ninety-two (92) inclusive and known

as the Tax, Judgment, Sale, Redemption and Forfeiture Record, for the amount of said delinquent taxes interest, penalties and costs due and unpaid thereon for the year A. D. 1900, and prior years.

And it appearing to the court, that due notice has been given of the intended application for a judgment and order made or cause shown, except as to the property described in the objections on file, why judgment should not be entered against said lands and lots, for the amount of said delinquent taxes, interest, penalties and costs, due and unpaid thereon, for the year or years herein set forth.

15 Therefore it is considered by the court that judgment be and is hereby entered against the aforesaid tract or tracts or lots of land or parts of tracts or lots (as the case may be) except as to the property described in the objections on file in favor of the people of the State of Illinois, for the sum annexed to each, being the amount of taxes, interest penalties and costs due severally thereon.

And it is ordered by the court that the said several tracts or lots of land, except as to the property described in the objections on file, be sold as the law directs, to satisfy the amount of taxes interest, penalties and costs annexed to them severally.

ORRIN N. CARTER,
Judge of the County Court of Cook County.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

I, Philip Knopf, clerk of the county court in and for the county of Cook in the State aforesaid do hereby certify, that the above and foregoing being volumes one to ninety-two inclusive and known as the Tax Judgment, Redemption and Forfeiture Record, is a true and correct record of the delinquent real estate in said county against which judgment and order of sale was duly entered in the county court of said county on the 8th day of July 1901, for the amount of the taxes, special assessments, interest and costs due severally thereon as therein set forth, and that the judgment and order of court in relation thereto fully appears on said record.

In testimony whereof I have hereunto set my hand and affixed the seal of said county court at my office in the city of Chicago, in said county this 5th day of August A. D. 1901.

[SEAL.] PHILIP KNOPF,
Clerk of the County Court of Cook County.

16 And afterwards to wit: on the 9th day of July A. D. 1901 there was filed with the clerk of said court certain objections in words and figures, to wit:

STATE OF ILLINOIS, }
Cook County. }

In the County Court of Cook County, July Term, A. D. 1901.

In the Matter of the Application of SAMUEL B. Raymond, County Treasurer and *ex Officio* County Collector, etc., of Cook County,	Application for Judgment for General Taxes of the Year 1900.
vs.	
THE BOARD OF DIRECTORS OF THE CHICAGO Theological Seminary, Pleaded, etc.	

Now come the Board of Directors of the Chicago Theological Seminary, a corporation organized under the laws of the State of Illinois, owner of and interested in the different tracts of land and lots respectively, set forth in Schedule "A" hereto attached, by David Fales, its attorney, and objects to judgment being rendered against the said lots and tracts of land for any amount whatever for taxes, for the following reasons:

First. That by clause five of the charter of this objector granted to it by the State of Illinois, all the property of every kind and description of this objector is exempt from all taxes of every kind and description and that the general revenue act of the State of Illinois passed in the year 1872 with its amendments, being chapter
17 120 of the Revised Statutes of Illinois, is an impairment of the obligation of the contract between the State of Illinois and this objector arising from the said charter and its acceptance by this objector; and the said general revenue act of the State of Illinois is a violation of clause one, section ten article one, of the Constitution of the United States.

Second. That the State of Illinois in the year 1855, granted to this objector a charter, and by the provisions of sections 5 of said charter all property of every kind and description at any time owned, belonging to or appertaining to this objector, is and shall be exempt from the payment of all taxes whatever.

That after said charter was granted to this objector, the said charter was duly accepted by this objector; and since said acceptance all the lands of this objector against which judgment is sought for taxes was bought by this objector, and are now owned by it, that the general revenue act of the State of Illinois passed in the year 1872 with its amendments now in force, being chapter 120 of the Revised Statutes of Illinois, under which the said county treasurer and *ex officio* county collector of Cook county is seeking to obtain judgment against the lands of this objector in this proceeding, impairs the obligation of said legislative contract between the State of Illinois and this objector arising from the said charter, and is a violation of paragraph one, section ten, article one of the Constitution of the United States.

Third. That the general revenue act of the State of Illinois approved March 30, 1872, and in force July 1, 1872, entitled: "An act for the assessment of property and for the levy and collection of

taxes," as amended and in force at the date of the levy of the said taxes, and the action of the officers of the State of Illinois thereunder, impaired the obligation of the contract between the State of Illinois and this objector, arising from section 5 of the charter of objector granted to it by the State of Illinois, and was repugnant to clause 1, section 10, article 1, of the Constitution of the United States.

18 *Fourth.* That by the charter of this objector granted to it by the State of Illinois all property of this objector is free and exempt from all taxes of every kind and description.

Wherefore, this objector objects to judgment being rendered against its lands for any taxes whatever.

THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL SEMINARY,

By its attorney, DAVID FALES.

DAVID FALES,
Att'y for Objectors.

SCHEDULE "A."

1.

Lot ten (10) and east ½ of lot eleven (11), in block forty-six (46) in canal trustees' subdivision of section seven (7) township 39, north, range 14, east of the 3rd P. M.

2.

Lots 5 and 6 in block 3 in Page and Woods' subdivision of block 50, in canal trustees' subdivision, section 7 township 39, north range 14 east of 3rd P. M. being also lots 1, 2, 3, and 4, in sublots 5 and 6 in lot 3 in block 50 canal trustees' subdivision in section 7 township 39, north range 14 east of 3rd P. M.

3.

Also sublot 1, of a subdivision by E. J. Lewis of lots 1, 2, 3 and 4 in block 16 in Ashland Second addition to Chicago.

4.

Also sublot 1, in assessors' subdivision of lots 9 and 10 in Bronson's addition to Chicago, beginning at northwest corner of lot 9 running south on west line of said lot 9, 81.70 feet, thence

19 east 156 feet to east line of lot 10, thence north on said east line 81.70 feet, more or less, to the northeast corner of said lot 10; thence west — place of beginning.

5.

Also lots 16, 17, 19, 20, 21, 23, 24, 25 and 26, in block 23, in J. W. Scoville's subdivision of section 7, township 39, north range 13 east of 3rd P. M. (being in James W. Scoville's subdivision of the west ½ of the northeast ¼ of said section 7).

6.

Also lots 23, 24, 25, 26 and 27, in block 206 in Maywood, in section- 2, 11 and 14, township 39 north range 12 east of 3rd P. M.

7.

Also the east ten (10) acres of the south 30 acres of the west ½ of the northwest ¼ of section 28, township 40, north range 13, east of 3rd P. M.

8.

Lots 1, 2 and 3, in block 1, in Western addition of section 15, township 39 north range 12 east of 3rd P. M.

9.

Lots 12 in block 6 in Cytraus addition to Argyle in section 8 township 40, north range 14, east of the 3rd P. M. and subdivision of lot 44, Brown's Second addition to Argyle.

10.

Lots 19 and 20 in block 16 Bradish and Wizner's addition in section 24 township 39 north range 12, east of the 3rd P. M.

11.

East 19, 43 feet sublot four (4) assessors' division of lot two (2) and lots three (3) to seven (7) in block sixty-four (64) in the canal trustees' subdivision of section 7, in township 39, north range 14 east of 3rd P. M.

12.

Lots 32, 33, 34, 35 and 36 in block 20 in Bickerdike's addition to Chicago.

20

13.

Also lots 16, 17, 18 and 19 in block 1, in Union Park addition to Chicago.

14.

Also lots 2 and 5 in Eastman's subdivision of part of lots 7 and 8, in circuit court partition of the southwest ¼ of section 8, township 39 north range 14, east of 3rd P. M.; also private alley south and adjoining the said sublot 5, in said Eastman's subdivision described as aforesaid.

15.

The south 14 feet and 3 inches of lot 14 and the north 5 feet and 9 inches of lot 15 in block 9, in Ashland Second addition to Chicago being sublot 4, in lots 12 to 16 in block 9, in section 18 township 39 north range 14 east of 3rd P. M. (Ashland Second addition).

16.

Also sublots 6, 7, and 8 in lots 3 and 4 in block 26 in School Section addition to Chicago in section 16 township 39 north range 14

east of 3rd P. M.; said sublots 6, 7, and 8 being in Collins' subdivision of lots 3 and 4 in block 26 in School Section addition to Chicago.

21 And afterwards to wit: on the 17th day of July A. D. 1901 the following among other proceedings were had by and before said court and entered of record as follows to wit:

In the matter of the application of the county treasurer and *ex officio* collector of the county of Cook, in the State of Illinois, for judgment of sale for the delinquent taxes and special assessments levied and assessed for the year 1900 and previous thereto. 32, general.

This day come- the county treasurer and *ex officio* collector of Cook county Illinois by his attorney and the objector herein by David Fales its attorney and said cause coming on to be heard upon the foregoing application and the objections thereto after a hearing it is ordered by the court that said objections be and are hereby overruled. Whereupon the said objector now here duly excepts and enters herein its motion for a new trial in said cause which motion after a hearing is overruled by the court. Exception by objector, and thereupon it is considered by the court that judgment be and is hereby entered against the property of said objector in favor of the People of the State of Illinois for the amount of taxes interest penalties and costs due thereon.

It is further ordered that the property of said objector be sold as the law directs to satisfy the amount of taxes interest penalties and costs due thereon as aforesaid.

To which judgment of sale the said objector now here duly excepts and prays an appeal to the supreme court of the State of Illinois which is allowed upon said objector depositing with the said county treasurer the amount of taxes for the year 1900 due and payable herein and upon said objector filing herein within 30 days from this date its bill of exceptions and its appeal bond in the
22 penal sum of $250.00 with sureties thereon to be approved by the court.

And afterwards to wit: on the 18th day of July A. D. 1901 there was filed with the clerk of said court a certain bill of exceptions in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss.:
Cook County, }

In the County Court of Cook County, July Term, A. D. 1901.

In the Matter of the Application of SAMUEL B. RAYMOND, County Treasurer and *ex Officio* County Collector of Cook County, for Judgment for Delinquent Taxes for the Year 1900, } No. 3

vs.

THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL Seminary, Impleaded, &c.

Objections of the Board of Directors of the Chicago Theologica Seminary.

Bill of Exceptions.

Be it remembered, that heretofore, on, to wit Wednesday, Jul seventeenth (17th) A. D. 1901, before the Honorable Richard S Farrand, judge of the county court of Lee county, Illinois, sitting a the said judge of said county court of Cook county, in th
23 absence of Orrin N. Carter judge and at his request, the ob jections of the Board of Directors of the Chicago Theologica Seminary, a corporation, came on for hearing. There appeared fo the said objector David Fales; for the applicant, Edwin W. Sim William F. Struckmann and Frank Shepard.

It was stipulated and conceded in open court that the title to a the property in question described in objections of defendant objecto on the first day of April 1900 was owned by objector and is sti owned by it; that some of the lots are vacant and some are improve and rented to tenants of objector; that all the rentals and incom of all the property described in the objections are used for the objec contemplated in the charter granted to objector by the State of Ill nois, and that all of said parcels and lots were bought by the objecto or given to the objector for the promotion of the objects mentione in the charter; that the objector is the owner of other lots upo which it has constructed buildings wherein is given instruction b professors and instructors to carry out the object designated in it charter, and that the lots occupied by the buildings where said in struction is given are not taxed; that since the grant to it by th State of Illinois of its charter the objector corporation has accepte the same and has expended in the erection and purchase of build ings upon the real estate designated in the objections and upo other lots owned by objector corporation, *to* an amount exceedin $200,000, and that a large number of students have — and ar being instructed by said corporation according to its charter.

The applicant introduced in evidence the collector's warrants fo general taxes for 1900; also the county collector's sworn report delinquent lands and lots delinquent for the general taxes of 190 so far as the same relate to objector's property; also the certificate

publication of notices of application for judgment for such taxes, all of which were read in evidence.

24 It was further stipulated that the county treasurer and *ex officio* county collector had published all necessary notices to give the court jurisdiction of the subject-matter and the parties. It was further agreed that said warrants, reports and certificate of publication need not be herein set out in full, but that the foregoing stipulation of facts represent the facts as they appear from said evidence.

The objector to maintain the issue introduced and read in evidence its charter, entitled, "An act to incorporate the Chicago Theological Seminary," a copy of which, certified by the secretary of State of Illinois, is as follows:

SEC. 1. Be it enacted by the people of the State of Illinois represented in the General Assembly, That Stephen Peet, William Carter, Flavel Bascom, M. A. Jewett, G. W. Parkins, Philo Carpenter, Truman Post, John C. Holbrook, Horace Hobart, John J. Miter Hiram Foote, Joseph Johnston, Harvey D. Kitchell, Alden B. Robbins, Adam S. Kedzie, L. Smith Hobart, Nathan H. Eggleston, Solomon L. Whitney, Jesse Gurnsey, Joseph E. Beebe, Chas. W. Camp, John G. Foote, Richard Hall, Geo. S. F. Savage and their successors be and they hereby are created a body politic and corporate to be styled "The Board of Directors of the Chicago Theological Seminary," and by that name and style to remain, and have perpetual succession with full power to sue and be sued plead and be impleaded to acquire, hold and convey property real and personal, to have and use a common seal, to alter and renew the same at pleasure—to make and alter a constitution and by-laws for the conducting and government of said institution, and fully to do whatever may be necessary to carry out the object of this act of incorporation.

SEC. 2. That the seminary shall be located in or near the city of Chicago. The object shall be to furnish instruction and the means of education to young men preparing for the gospel ministry and the institution shall be equally open to all denominations of

25 Christians for this purpose.

SEC. 3. That the board — directors shall consist of twenty-four members, nine of whom shall constitute a quorum for the transaction of business. The directors shall hereafter be elected in accordance with the provisions of the constitution under which they act, and shall hold their office until their successors are appointed.

SEC. 4. That the board of directors shall have power to appoint an executive committee and such agents as they may deem necessary and such officers, professors, and teachers as the government and instruction of the seminary may require, and prescribe their duties, to remove any of them for sufficient reasons, and to prescribe and direct the course of studies to be pursued in the institution:—also to confer such degrees as are consistent with the objects of the institution.

SEC. 5. That the property of whatever kind or description belonging or appertaining to said seminary shall be forever free and exempt from all taxation for all purposes whatsoever.

SEC. 6. This act to take effect and be in force from and after its passage, and it shall be deemed a public act and shall be construed liberally in all courts for the purpose therein expressed.

THOS. I. TURNER,
Speaker of the House — Rep.
G. KOERNER,
Speaker of Senate.

Approved Feb. 15, 1855.
J. A. MATTERSON.

UNITED STATES OF AMERICA, } ss:
State of Illinois, }

OFFICE OF THE SECRETARY OF STATE.

I, James A. Rose, secretary of state of the State of Illinois, do hereby certify that the foregoing is a true copy of an act entitled "An act to incorporate the Chicago Theological Seminary" approved
26 February 15th 1855, the original of which is now on file in my office.

In witness whereof, I hereunto set my hand and affix the great seal of State, at the city of Springfield, this *eight* day of *June* A. D. *1900.*

[Seal of the State of Illinois.]

JAMES A. ROSE,
Secretary of State.

(U. S. ten-cents revenue stamp affixed, duly cancelled.)

Which was all the evidence offered by either party.

Thereupon the court found issues for the applicant, to which the objector duly excepted.

Thereupon the objector presented the following propositions of law, and asks the court to hold the same.

1.

The court holds as a proposition of law, that clause 5 of the charter of objector, exempts from taxation for the taxes of the year 1900, all lands owned by objector April 1st, 1900, and still owned by it.

2.

The court holds as a proposition of law, that all lands owned by said objector, April 1st, 1900, and still owned by it, are exempt from taxation under the charter of said objector, for the general taxes of the year 1900.

3.

The court holds as a proposition of law, that the revenue act of the State of Illinois, of the year 1872, now in force as amended impairs the obligation of the contract arising from the charter of objector granted to it by the State of Illinois, and accepted by objector, and is a violation of paragraph 1, section 10, article 1, of the Constitution of the United States.

4.

The court holds as a proposition of law, that the revenue
27 act of Illinois of 1872, as amended, and now in force, and this application thereunder of the county treasurer and *ex officio* county collector of Cook county, for judgment for the taxes of 1900, impair the obligation of the contract arising from the charter granted to objector by the State of Illinois and is a violation of paragraph 1, section 10 article 1, of the Constitution of the United States.

5.

The court holds as a proposition of law, that this application of the county treasurer and *ex officio* collector of Cook county for judgment for the taxes of the year 1900, under the revenue act of Illinois of 1872, now in force as amended, and the said revenue act as amended, impair the obligation of contract arising from the charter of objector granted to objector by the State of Illinois, and violate paragraph 1, section 10, article 1, of the Constitution of the United States.

6.

That the general revenue act of the State of Illinois, as in force at the date of the levy of the taxes of 1900, and the action of the officers of the State of Illinois thereunder in levying said taxes, and this application for judgment therefor, were and are in violation of the rights of objector under its charter granted to it by the State of Illinois and impair the obligation of the contract arising therefrom, and are repugnant to the Constitution of the United States.

But the court refuses to hold each and every one thereof, to which the objector then and there duly excepted.

Thereupon the objector entered its motion for a new trial in said cause, which the court overruled and entered judgment against the lands of the objector described in its objections, and overruled the objections of the objector, to which overruling of the motion for a new trial and the objections of objector, and the entry of judgment against the lands of objector described in its objections, the objector then and there duly excepted.

28 And forasmuch as the matters above set forth do not fully appear of record, the objector tenders this its bill of exceptions, and prays that the same may be signed and sealed by the judge of this court, pursuant to the statute in such case made; which is done accordingly, this *seventeenth* day of *July A. D. 1901.*

RICHARD S. FARRAND, [SEAL.]
Acting Judge.

And on, to wit: the 18th day of July A. D. 1901 there was filed with the clerk of said court a certain motion for a new trial in words and figures as follows to wit.

In the County Court of Cook County, July Term, A. D. 1901.

In the Matter of the Application of SAMUEL B. RAYMOND, County Treasurer and *ex Officio* County Collector of Cook County, for Judgment for Delinquent Taxes for the Year 1900,
vs.
THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL SEMINARY, Impleaded, &c., &c.
} Objections No. 32.

Motion for a New Trial.

Now comes the objectors The Board of Directors of the Chicago Theological Seminary and moves the court to grant a new trial in said cause for the following reasons.

First. The court erred in finding the issues for said appli-
29 cant and against the lands of objector described in its objections.

Second. The court erred in refusing to hold the propositions of law submitted by objector, and each thereof.

Third. The court erred in not holding the lands of objector free and exempt from taxation for the taxes of 1900 under the charter of said objector.

Fourth. The court erred in not holding the revenue act of 1872 approved March 30th 1872, in force July 1st, 1872, entitled "An act for the assessment of property and for the levy and collection of taxes" with its amendments and impairment of the contract between the State of Illinois and objector arising from the charter of objector and a violation of clause 1, section 10, article 1, of the Constitution of the United States.

Fifth. The court erred in not holding that the said revenue act of Illinois of 1872 with its amendments now in force and the application of the said county treasurer and *ex officio* county collector of Cook county for judgment for taxes of the year 1900 thereunder was repugnant to and a violation of clause 1, section 10, article 1, of the Constitution of the United States.

And afterwards to wit on the 29th day of July A. D. 1901, there was filed with the clerk of said court a certain bond in words and figures as follows to wit:

Know all men by these presents that we the Board of Directors of the Chicago Theological Seminary, a corporation organized under the laws of Illinois, and Edson J. Harkness of the county of Cook and State of Illinois, are held and firmly bound unto the People of the State of Illinois, in the penal sum of two hundred and fifty (250) dollars lawful money of the United States, for the pay-
30 ment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally and firmly, by these presents.

Witness our hands and seals, this nineteenth (19th) day of July A. D. 1901.

ne condition of the above obligation is such, that whereas, the
le of the State of Illinois did, on the seventeenth (17th) day of
A. D. 1901, in the county court of Cook county, in the State
said, and of the July term thereof A. D. 1901, recover a judg-
t against the following-described real estate on the application
amuel B. Raymond county treasurer and *ex officio* county col-
r of Cook county for judgment for delinquent taxes for the year
, to wit:

ot ten (10) and east ½ of lot eleven (11) in block forty-six (46) in
l trustees' subdivision of section seven (7) township 39 north
ge 14, east of the 3rd P. M. for the sum of $36.57.

ots 5 and 6 in block 3 in Page & Woods' subdivision of block 50
anal trustees' subdivision section 7, township 39, north range 14,
of 3rd P. M. being also lots 1, 2, 3, and 4 in sublots 5 and 6 in
3, in block 50, canal trustees' subdivision in section 7 township
orth range 14 east of 3rd P. M. for the sum of $502.68.

lso sublot 1, of a subdivision by E. J. Lewis of lots 1, 2, 3 and 4
lock 16, in Ashland's 2nd addition to Chicago in section- 18, 39,
or the sum of $92.32.

lso sublot 1, in assessors' subdivision of lots 9 and 10, in Bron-
's addition to Chicago, beginning at northwest corner of lot 9,
ning south on west line of said lot 9, 81.70 feet, thence east 156
to east line of lot 10, thence north on said east line 81.70 feet
re or less to the northeast corner of said lot 10, thence west to
place of beginning for the sum of $733.81.

Also lots 16, 17, 19, 20, 21, 23, 24, 25 and 26, in block 23,
Scoville's subdivision of section 7, township 39, north range 13
t of 3rd P. M. (being James W. Scoville's subdivision of the west
f the northeast ¼ of said section 7) for the sum of $109.96.

Also lots 23, 24, 25, 26 and 27 in block 206 in Maywood in sections
11 and 14 township 39, north range 12, east of 3rd P. M. for the
n of $17.48.

Also the east ten (10) acres of the south 30 acres of the west ½ of
northwest ¼ of section 28, township 40 north range 13 east of 3rd
M. for the sum of $52.45.

Lots 1, 2, and 3 in block 1, in Western addition of section 15
wnship 39, north range 12, east of 3rd P. M. for the sum of
.43.

Lot 12 in block 6, in Chytraus' addition to Argyle in section 8,
wnship 40 north range 14, east of the 3rd P. M. and subdivis-
n of lot 44 Brown's Second addition to Argyle for the sum of
6.81.

Lots 19 and 20 in block 16 in Bradish and Wizner's addition to
verside in section 24 township 39 north range 12, east of the 3rd
M. for the sum of $3.30.

East 19.43 feet sublot four (4) assessors' division of lot two (2) and
ts three (3) to seven (7) in block sixty-four (64) in the canal trustees'
bdivision of section 7, in township 39, north range 14, east of the
d P. M. for the sum of $76.96.

Lots 32, 33, 34, 35 and 36 in block 20 in Bickerdike's addition to
hicago for the sum of $119.94.

Also lots 16, 17, 18 and 19 in block 1 in Union Park addition to Chicago for the sum of $1541.06.

32 Also lots 2 and 5 in Eastman's subdivision of part of lots 7 and 8 in circuit court partition of the southwest ¼ of section 8, township 39, north range 14, east of 3rd P. M. with private alley south and adjoining the said sublot 5 in said Eastman's subdivision described as aforesaid for the sum of $157.20.

The south 14 feet and 3 inches of lot 14 and the north 5 feet and 9 inches of lot 15 in block 9, in Ashland Second addition to Chicago being sublot 4 in lots 12 to 16 in block 9, in section 18, township 39, north range 14 east of 3rd P. M. (Ashland Second addition) for the sum of $38.17.

Also sublots 6, 7 and 8 in lots 3 and 4, in block 26 in School Section addition to Chicago in section 16, township 39, north range 14 east of 3rd P. M. said sublots 6, 7 and 8 being in Collins' subdivision of lots 3 and 4 in block 26 in School Section addition to Chicago for the sum of six hundred and thirty (630) dollars and eighty-one (81) cents ($630.81) from which said judgment of the said county court of Cook county the said Board of Directors of the Chicago Theological Seminary have prayed for and obtained an appeal to the supreme court of Illinois, and has deposited with the county treasurer of Cook county the amount of said taxes and costs and interest in full.

Now, therefore, if the said The Board of Directors of the Chicago Theological Seminary shall duly prosecute its said appeal with effect and moreover pay the amount of the judgment for costs, rendered and to be rendered, against it in case the said judgment shall be affirmed in said supreme court, and shall pay the amount of taxes finally adjudged against said real estate, then the above obligation to be void, otherwise to remain in full force and virtue.

THE BOARD OF DIRECTORS OF THE
CHICAGO THEOLOGICAL SEMINARY,
[SEAL.] By DAVID FALES, *Vice-Chairman.*
HENRY W. CHESTER, *Treasurer.*
EDSON J. HARKNESS.

33 Approved by me this 29th day of July A. D. 1901
RICHARD S. FARRAND,
Acting Judge.

And afterwards to wit: on the 29th day of July A. D. 1901, the following among other proceedings were had by and before said court — entered of record to wit:

In the matter of the application of the county treasurer and *ex officio* collector of the county of Cook, in the State of Illinois, for judgment of sale for the delinquent taxes and special assessments levied and assessed for the year 1900 and previous thereto. 32, general.

It appearing to the court that the said objector, The Board of Directors of the Chicago Theological Seminary has deposited with the

county collector of Cook county a sum equal to the amount of taxes for the year 1900, on the property described in the objections of objector, with interest and costs, and having presented appeal bond this day filed, which is hereby approved.

It is hereby ordered that appeal be and is hereby allowed objector to the supreme court of the State of Illinois.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Philip Knopf, clerk of the county court of Cook county, in the State aforesaid, and keeper of the records and files thereof, do hereby certify that the foregoing is a true correct and complete tran-
34 script of the record in the matter of the objections of the Board of Directors of the Chicago Theological Seminary filed to the application of Samuel B. Raymond county treasurer and *ex officio* collector of the county of Cook for judgment and order of sale for the delinquent taxes and special assessments levied and assessed for the year 1900 and prior years. Objections general No. 32. All of which appears from the records and files of my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, in said county this 22nd day of August A. D. 1901.

[SEAL.]

PHILIP KNOPF,
Clerk of the County Court.

In the Supreme Court of Illinois, October Term, A. D. 1901.

THE BOARD OF DIRECTORS OF THE CHICAGO Theological Seminary, a Corporation, etc., Appellant,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* Samuel B. Raymond, County Treasurer and *ex Officio* County Collector of Cook County, Appellee.
} Appeal from County Court, Cook County.

Assignment of Errors.

And now come- The Board of Directors of the Chicago Theological Seminary, a corporation etc., appellant, by said Fales, its attorney and say- that in the record and proceedings and in rendering judgment aforesaid there is manifest error in this, to wit:

35 I. The finding of the said county court of Cook county is contrary to the law.

II. The finding of the said county court of Cook county is contrary to the evidence.

III. The county court below erred in entering judgment against appellant's lands.

IV. The county court below erred in not holding as exempt from taxation under its charter the lots and lands described in appellant's objections.

V. The court below erred in not sustaining the objections of appellant and in rendering judgment against the lands of appellant described in it- objections.

VI. The court below erred in not holding that by clause five of the charter of this objector granted to it by the State of Illinois, all the property of every kind and description of this objector is exempt from all taxes of every kind and description.

VII. The court erred in not holding that the general revenue act of the State of Illinois passed in the year 1872 with its amendments, being chapter 120 of the Revised Statutes of Illinois, — and was an impairment of the obligation of the contract between the State of Illinois and this objector arising from the said charter and its acceptance by this objector; and in not holding that the general revenue act of the State of Illinois was a violation of clause one section ten article one of the Constitution of the United States.

VIII. The court erred in holding that the general revenue act of the State of Illinois passed in the year 1872 with its amendment now in force being chapter 120 of the Revised Statutes of Illinois under which the said county treasurer and *ex officio* county collector of Cook county sought to obtain judgment against the lands if this objector in this proceeding, did not impair the obligation of said legislative contract between the State of Illinois and this objector arising from the charter granted to it by the State of Illinois; and in holding that the revenue act of Illinois was not a violation
36 of paragraph one, section ten article one of the Constitution of the United States.

IX. The court erred in not holding that the general revenue act of the State of Illinois approved March 30, 1872, entitled "An act for the assessment of property and for the levy and collection of taxes," as amended and in force at the date of the levy of the said taxes and the action of the officers of the State of Illinois thereunder impaired the obligation of the contract between the State of Illinois and this objector arising from section 5 of the charter granted to it by the State of Illinois and in not holding that such revenue act and its amendments *was* repugnant to clause 1, section 10 article 1, of the Constitution of the United States.

X. The court erred in not holding that by the charter of this objector granted to it by the State of Illinois all property of this objector described in its objections filed therein, is free and exempt from all taxes of every kind and description.

XI. The court below erred in refusing the propositions of law submitted by objector and each thereof.

XII. The court below erred in overruling the motion for a new trial of objector &c.

By reason whereof the appellant prays that said judgment may be reversed.

DAVID FALES,
Attorney for Appellant.

J. J. HERRICK, *Of Counsel.*

37 And afterwards to wit: on the 12th day of October A. D. 1901, following proceedings were by said court had and entered of record.

THE BOARD OF DIRECTORS OF THE Chicago Theological Seminary, a Corporation, etc., Appellant, *vs.* THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* Samuel B. Raymond, County Treasurer and *ex Officio* County Collector of Cook County, Appellee.	Appeal from County Court, Cook County.

Now on this day come the parties hereto, and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that appellant, hath filed herein a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee having entered motion to affirm said judgment and for costs and *procedendo*, and said motions being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the court:

Therefore it is ordered by the court that this cause be and the same is hereby taken under advisement.

38 At a supreme court, begun and held at Springfield on Tuesday, the third day of December in the year of our Lord one thousand nine hundred and one, within and for the State of Illinois.

Present: Jacob W. Wilkin, chief justice. Benjamin D. Magruder, justice, Joseph N. Carter, justice, James H. Cartwright, justice, Carroll C. Boggs, justice, John P. Hand, justice, James B. Ricks, justice, Howland J. Hamlin, attorney general. Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk*.

Be it remembered, to wit, on the eighteenth day of December A. D. 1901, the same being in vacation after the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

THE BOARD OF DIRECTORS OF THE Chicago Theological Seminary, a Corporation, etc., Appellant,
v.
THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* Samuel B. Raymond, County Treasurer and *ex Officio* County Collector of Cook County, Appellee.
} No. —. Appeal from County Court, Cook —.

And now, on this day, this cause having been argued by counsel, and the court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and that in that record there is no error: Therefore it is considered by the court, that the judgment aforesaid be affirmed in all things, and stand in full force and effect, notwithstanding the said matters and things therein assigned for error. And it is further considered by the court, that the said appellee recover of and from the said appellant his costs by him in this behalf expended, and that he have execution therefor.

39 At a supreme court, begun and held at Springfield on Tuesday the third day of December, in the year of our Lord one thousand nine hundred and one, within and for the State of Illinois.

Present: Jacob W. Wilkin, chief justice, Benjamin D. Magruder, justice, Joseph N. Carter, justice, James H. Cartwright, justice, Carroll C. Boggs, justice, John P. Hand, justice, James B. Ricks, justice, Howland J. Hamlin, attorney general. Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, that afterwards, to wit, on the eighteenth day of December, 1901, the opinion of the court was filed in the words and figures following, to wit:

THE BOARD OF DIRECTORS OF THE Chicago Theological Seminary
vs.
THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.*
} No. 2070. Error to —. Appeal from County Court, Cook —.

40 Docket No. 2070—Agenda 36—Northern Div.—Oct., 1901.

BOARD OF DIRECTORS CHICAGO THEO. SEM.
v.
PEOPLE *ex Rel.*

Mr. Justice Carter delivered the opinion of the court:

This is an appeal from a judgment ordering the sale of lands of appellant returned as delinquent for the non-payment of taxes for

the year 1900. It was claimed by appellant that its said lands were exempt from taxation by the act incorporating it. These lands were not used in connection with appellant's seminary, as a part of the seminary grounds, but were in part vacant and in part improved, yielding rents for its support. In *People ex rel. v. Chicago Theological Seminary*, 174 Ill. 177, and in *Chicago Theological Seminary v. People ex rel.* 189 *id.* 439, the precise question here involved, and between the same parties, was decided adversely to appellant. In those cases we held that the provision in appellant's charter that "the property, of whatever kind or description, belonging or appertaining to said seminary, shall be forever free and exempt from all taxation for all purposes whatsoever," refers only to property used in immediate connection with the seminary, and does not include other property which may be owned, held or rented by the corporation as an investment, even though the income derived therefrom is used for the support of appellant's school. Those cases are decisive of this, and the judgment of the county court will be affirmed.

Judgment affirmed.

41 STATE OF ILLINOIS, } ss:
Supreme Court, }

I, Christopher Mamer, elected clerk of the supreme court, in and for the northern grand division of the State of Illinois, and keeper of the records and seal thereof, do hereby certify that the foregoing is a true copy of the opinion of the said supreme court in the above-entitled cause of record in my office.

This copy is not to operate as a mandate in any event. Mandate will be issued only on request and payment of costs.

In testimony whereof, I have set my hand and affixed the seal of the said supreme court at Springfield, this 4th day of January A. D. 1902.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of the Supreme Court.

42 In the Supreme Court of Illinois.

THE BOARD OF DIRECTORS OF THE CHICAGO Theological Seminary, Appellant,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* Samuel B. Raymond, County Treasurer and *ex Officio* County Collector of Cook County, Illinois, Appellee.

Appeal from the County Court of Cook County.

I do hereby certify that in the above-entitled cause there was drawn in question in said supreme court of the State of Illinois, the validity of a statute of the State of Illinois, being the general revenue act of the State of Illinois, approved March 30, 1872, and in force July 1, 1872, entitled: "An act for the assessment of property

and for the levy and collection of taxes," with its amendments, on the ground that said general revenue act of the State of Illinois impaired the obligation of the contract arising from the charter granted to said The Board of Directors of the Chicago Theological Seminary, the appellant, by the State of Illinois, and was repugnant to the Constitution of the United States, and that the decision of said supreme court of the State of Illinois was in favor of the validity of said statute.

JACOB W. WILKIN,
Chief Justice of the Supreme Court of the State of Illinois.

43 And afterwards, to wit: on the fifth day of February A. D. 1902 there was filed in the office of the clerk of said court a certain petition for writ of error, order allowing same, and bond, which said petition, order and bond are in the words and figures following, viz:

44 In the Supreme Court of Illinois.

THE BOARD OF DIRECTORS OF THE Chicago Theological Seminary, Appellant, *vs.* THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* Samuel B. Raymond, County Treasurer and *ex Officio* County Collector of Cook County, Illinois, Appellee.	Appeal from the County Court of Cook County.

Petition of the Board of Directors of the Chicago Theological Seminary for allowance of writ of error from the Supreme Court of the United States to the supreme court of the State of Illinois.

To the Honorable Jacob W. Wilkin, chief justice of the supreme court of the State of Illinois:

Now comes the Board of Directors of the Chicago Theological Seminary, a corporation, by David Fales and John J. Herrick, its attorneys, and shows to the chief justice of the supreme court of the State of Illinois that, in the record and proceedings and also in the rendition of the judgment in a suit between said The Board of Directors of the Chicago Theological Seminary, appellant, and The People of the State of Illinois *ex rel.* Samuel B. Raymond, county treasurer and *ex officio* county collector of Cook county, Illinois, appellee, lately pending in the supreme court of the State of Illinois, being the highest court of law or equity of the said State in which a decision could be had in said suit, and in which a final judgment was rendered against it on the eighteenth (18th) day of December A. D. 1901, in said suit, as appears by the record now remaining in said supreme court of the State of Illinois, the validity of a statute of the State of Illinois, being the general revenue act of

the State of Illinois, approved March 30 1872, and in force July 1, 1872, entitled: "An act for the assessment of property and for the levy and collection of taxes," with its amendments, was drawn in question in said suit by said The Board of Directors of
45 the Chicago Theological Seminary, on the ground that said general revenue act of the State of Illinois impaired the obligation of the contract arising from the charter granted to said The Board of Directors of the Chicago Theological Seminary by the State of Illinois, and was repugnant to the Constitution of the United States, and that the decision of said supreme court of the State of Illinois was in favor of the validity of said statute; that in said suit the validity of the authority exercised by the officers of the State of Illinois under said general revenue act, in levying the taxes for which judgment was rendered in said suit, and in rendering said judgment, was also drawn in question in said suit by said The Board of Directors of the Chicago Theological Seminary, on the ground that said authority exercised under said statute impaired the obligation of the contract arising from the charter granted to the said The Board of Directors of the Chicago Theological Seminary by the State of Illinois, and was repugnant to the Constitution of the United States and that the decision of the supreme court of the State of Illinois was in favor of the validity of said authority so exercised under said act; that certain rights and privileges were also claimed under the Constitution of the United States by said The Board of Directors of the Chicago Theological Seminary, and that said rights and privileges were specially set up and claimed under said Constitution, and that said supreme court of the State of Illinois erroneously decided against said rights of said The Board of Directors of the Chicago Theological Seminary.

From all of which said The Board of Directors of the Chicago Theological Seminary alleges that it appears in said record and proceedings in said suit, that manifest error has occurred, to the great damage of said The Board of Directors of the Chicago Theological Seminary.

Wherefore, said The Board of Directors of the Chicago Theological Seminary prays an allowance of a writ of error from the Supreme Court of the United States to the supreme court of the
46 State of Illinois, that the said record may be reviewed and the said error therein corrected, and speedy justice done in the premises, and that a citation may be issued herein pursuant to law and according to the usual course and practice in such cases.

And your petitioner will ever pray, etc.

DAVID FALES &
JOHN J. HERRICK,
Attorneys for Petitioner, The Board of Directors of the Chicago Theological Seminary.

The writ of error herein prayed for is hereby allowed this 3rd day of February, A. D. 1902, to operate as a supersedeas upon the plaintiff in error, The Board of Directors of the Chicago Theological

Seminary, filing bond in the penal sum of two thousand dollars ($2,000), with Edson J. Harkness as surety.

JACOB W. WILKIN,
Chief Justice of the Supreme Court of the State of Illinois.

47 *Bond.*

Know all men by these presents, that we, *The Board of Directors of the Chicago Theological Seminary*, a corporation, as principal, and *Edson J. Harkness*, of Chicago, Illinois, as surety, are held and firmly bound unto *the People of the State of Illinois*, in the penal sum of *two thousand dollars ($2,000)*, to be paid to said The People of the State of Illinois, for the payment of which, well and truly to be made, we said The Board of Directors of the Chicago Theological Seminary, for itself, its successors and assigns, and the said Edson J. Harkness, his heirs and personal representatives, bind ourselves personally and jointly and severally, firmly by these presents.

Sealed with our seals and dated this — day of February, in the year of our Lord *one thousand nine hundred and two.*

Whereas the above-named The Board of Directors of the Chicago Theological Seminary has prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered on the *18th* day of *December, A. D. 1901*, in an action entitled "*The Board of Directors of the Chicago Theological Seminary*, appellant, *vs. The People of the State of Illinois, ex rel. Samuel B. Raymond, county treasurer and ex officio county collector of Cook county, Illinois*, appellee," against said The Board of Directors of the Chicago Theological Seminary, by the supreme court of the State of Illinois, in a suit lately pending in said court between said The Board of Directors of the Chicago Theological Seminary, as appellant, and said The People of the State of Illinois, *ex rel.* Samuel B. Raymond, county treasurer and *ex officio* county collector of Cook county, Illinois, as appellee:

Now, therefore, the condition of this obligation is such that if the above-named The Board of Directors of the Chicago Theological Seminary shall prosecute its writ of error to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation to be void, otherwise to remain in full force and virtue.

48 THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL SEMINARY,
[SEAL.] By DAVID FALES, *Its Vice-Chairman.*
EDSON J. HARKNESS. [SEAL.]

Attest: GEORGE S. F. SAVAGE, *Its Secretary.*

Approved by chief justice of the supreme court of the State of Illinois.

JACOB W. WILKIN,
Chief Justice of the Supreme Court of the State of Illinois.

49 In the Supreme Court of the United States.

THE BOARD OF DIRECTORS OF THE CHICAGO Theological Seminary, Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* Samuel B. Raymond, County Treasurer and *ex Officio* County Collector of Cook County, Illinois, Defendant in Error.

Writ of Error to the Supreme Court of the State of Illinois.

Assignment of Errors.

And now comes the plaintiff in error, The Board of Directors of the Chicago Theological Seminary, by David Fales and John J. Herrick, its attorneys, and says that in the record and proceedings in the above-entitled cause, there is manifest error in this, to wit:

I.

That by clause 5 of the charter of plaintiff in error, granted to it by the State of Illinois, all property of every kind and description of the plaintiff in error was exempt from all taxes of every kind and description, and that the general revenue act of the State of Illinois, approved March 30, 1872, and in force July 1, 1872, entitled: "An act for the assessment of property and for the levy and collection of taxes," with its amendments, under which the said judgment of the county court of Cook county, Illinois, in said cause, against the lands of the plaintiff in error was rendered, was an impairment of the obligation of the contract between the State of Illinois and this
50 plaintiff in error, arising from said charter, and that the said general revenue act of the State of Illinois violated clause 1, section 10, article 1, of the Constitution of the United States, and that, by reason thereof, the said supreme court of Illinois erred in rendering judgment against the plaintiff in error.

II.

That by clause 5 of the charter of plaintiff in error, granted to it by the State of Illinois, all property of every kind and description of the plaintiff in error was exempt from all taxes of every kind and description, and that the general revenue act of the State of Illinois, approved March 30, 1872, and in force July 1, 1872, entitled: "An act for the assessment of property and for the levy and collection of taxes," with its amendments, under which the said judgment of the county court against the lands of the plaintiff in error was rendered, was an impairment of the obligation of the contract between the State of Illinois and this plaintiff in error, arising from said charter, and that the said general revenue act of the State of Illinois violated clause 1, section 10, article 1, of the Constitution of the United States, and that, by reason thereof, the said supreme court of Illinois erred in rendering judgment against the plaintiff in error.

III.

That the said supreme court of Illinois erred in not holding that the charter of the said plaintiff in error, granted to it by the State of Illinois, exempted from taxation, under the laws of the State of Illinois, the property of the plaintiff in error, against which judg-
51 ment was rendered by the county court of Cook county, Illinois, in said cause, and that, by reason thereof, the general revenue act of the State of Illinois, approved March 30, 1872, and in force July 1, 1872, entitled: "An act for the assessment of property and for the levy and collection of taxes," with its amendments, under which the taxes for which said judgment was rendered were levied, and the action of the officers of the State of Illinois thereunder, impaired the obligation of the contract between the State of Illinois and the plaintiff in error arising from the charter granted to the plaintiff in error by the State of Illinois, and was thereby repugnant to the Constitution of the United States, and in not reversing said judgment of the said county court of Cook county.

IV.

That the said supreme court of Illinois erred in not holding that the charter of the said plaintiff in error, granted to it by the State of Illinois, exempted from taxation, under the laws of the State of Illinois, the property of the plaintiff in error, against which judgment was rendered by the county court of Cook county, Illinois, in said cause, and that, by reason thereof, the general revenue act of the State of Illinois, approved March 30, 1872, and in force July 1, 1872, entitled: "An act for the assessment of property and for the levy and collection of taxes," with its amendments, under which the taxes for which said judgment was rendered were levied, and the action of the officers of the State of Illinois thereunder, impaired the obligation of the contract between the State of Illinois and the plaintiff in error arising from the charter granted to the plaintiff in error by the State of Illinois, and was thereby repugnant to
52 the Constitution of the United States, and in not reversing said judgment of the said county court of Cook county.

V.

That said general revenue act of the State of Illinois, as in force at the date of the levy of the taxes (of 1900) for which judgment was rendered in said suit in the county court of Cook county, Illinois, and of said judgment, and the action of the officers of the State of Illinois thereunder in levying said taxes, and in rendering said judgment, were in violation of the rights of the plaintiff in error under its charter granted to it by the State of Illinois, and impaired the obligation of the contract arising therefrom, and, were repugnant to the Constitution of the United States, and that, by reason thereof, the said supreme court of Illinois erred in not reversing the judgment against the plaintiff in error entered by the said county court of Cook county.

VI.

That said supreme court of Illinois erred in deciding that the charter of the plaintiff in error did not exempt from taxation, under the revenue law of Illinois, the property of plaintiff in error, against which judgment was rendered by the county court of Cook county, Illinois, in said suit, and that said general revenue act of the State of Illinois, under which such judgment was rendered, did not impair the obligation of said contract arising from said charter, and was not repugnant to the Constitution of the United States.

53 VII.

That the general revenue act of the State of Illinois approved March 30, 1872, and in force July 1, 1872, entitled: "An act for the assessment of property and for the levy and collection of taxes," as amended and in force at the date of the levy of the said taxes for which the judgment of the county court of Cook county, Illinois, in said cause was rendered against the lands of plaintiff in error in this proceeding, and of said judgment of said county court, and the action of the officers of the State of Illinois thereunder, impaired the obligation of the contract between the State of Illinois and the plaintiff in error, arising from section 5 of the charter of plaintiff in error granted to it by the State of Illinois, and was repugnant to clause 1, section 10, article 1, of the Constitution of the United States, and that, by reason thereof, the said supreme court of Illinois erred in rendering judgment against the plaintiff in error and in not reversing the judgment of the said county court of Cook county against the plaintiff in error.

VIII.

That the said general revenue act of the State of Illinois, approved March 30, 1872, and in force July 1, 1872, entitled: "An act for the assessment of property and for the levy and collection of taxes," with its amendments, and the different steps taken thereunder to impose the taxes on the lands of plaintiff in error, for which judgment was rendered by said county court of Cook county, Illinois,
54 impaired the obligation of the contract between the State of Illinois and this plaintiff in error arising from the charter granted this plaintiff in error by the State of Illinois, and were and are in violation of clause 1, section 10, article 1 of the Constitution of the United States, and that, by reason thereof, the said supreme court of Illinois erred in rendering judgment against the plaintiff in error and in not reversing the said judgment of the said county court of Cook county.

IX.

That the said supreme court of Illinois erred in not holding that the general revenue act of the State of Illinois, approved March 30, 1872, and in force July 1, 1872, entitled "An act for the assessment of property and for the levy and collection of taxes," with its amendments, under which the judgment of said county court of Cook county,

Illinois, in said cause, against the lands of the plaintiff in error was rendered, was an impairment of the obligation of the contract between the State of Illinois and this plaintiff in error, contained in clause 5 of the charter of plaintiff in error, granted to it by the State of Illinois, and, for that reason, repugnant to the Constitution of the United States, and in not reversing said judgment of said county court of Cook county because of said error.

X.

That the said supreme court of Illinois erred in not reversing the judgment of the county court of Cook county, Illinois, in favor of the defendant in error and against the plaintiff in error.

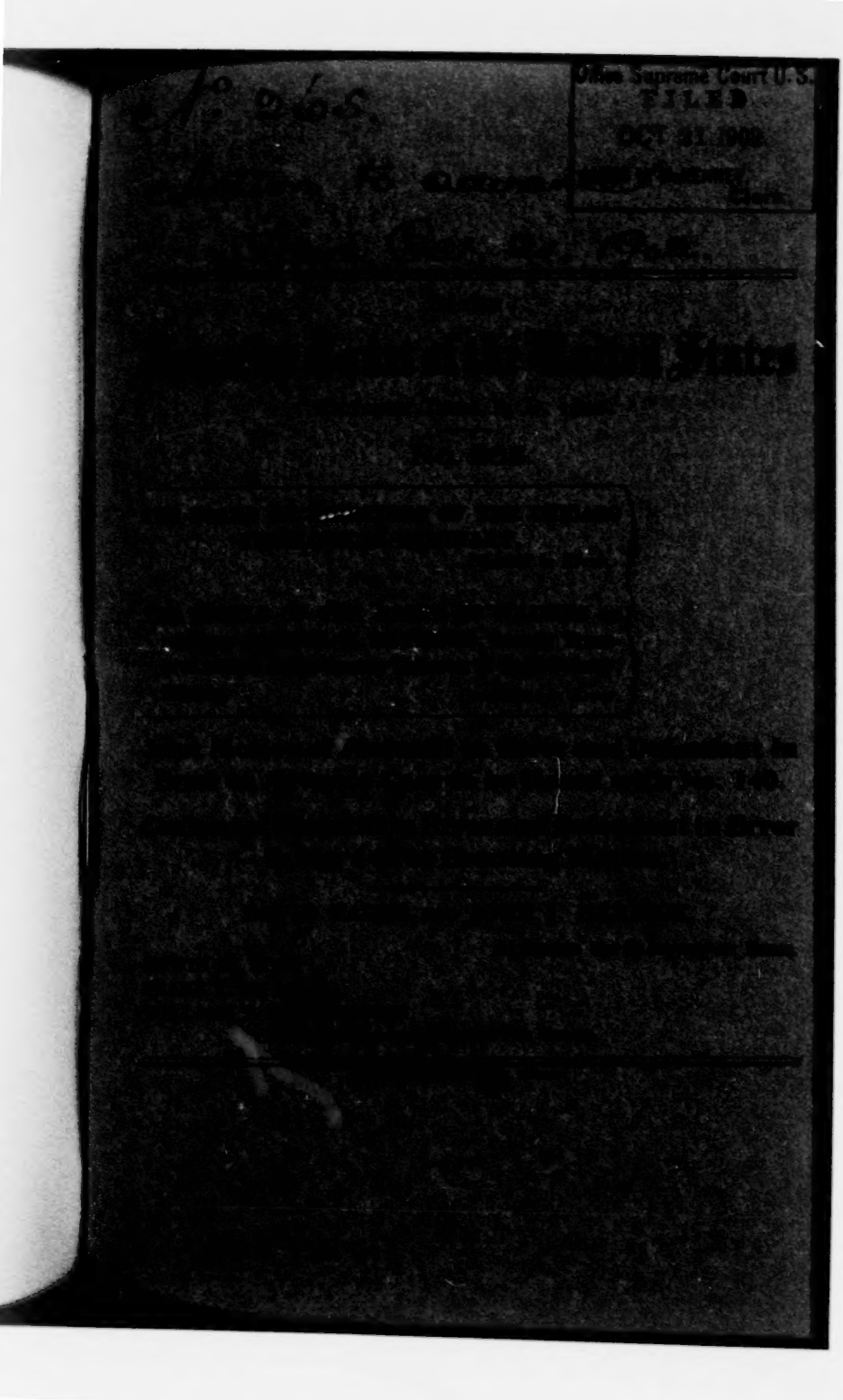
XI.

That said supreme court of Illinois erred in rendering judg-
55 ment in favor of said defendant in error.

Wherefore, the plaintiff in error, The Board of Directors of the Chicago Theological Seminary, prays that the judgment of said supreme court of Illinois may be reversed by this honorable court.

DAVID FALES &
JOHN J. HERRICK,
Attorneys for Plaintiff in Error.

Endorsed on cover: File No. 18,439. Illinois supreme court. Term No. 265. The Board of Directors of the Chicago Theological Seminary, plaintiff in error, *vs.* The People of the State of Illinois, *ex rel.* Samuel B. Raymond, county treasurer and *ex officio* county collector of Cook county, Illinois. Filed March 5th, 1902.



IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1902.

THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL SEMINARY, *Plaintiff in Error,*
vs.
THE PEOPLE OF THE STATE OF ILLINOIS, *ex relatione* SAMUEL B. RAYMOND, County Treasurer and ex officio County Collector of Cook County, Illinois, *Defendants in Error.*

No. 265.

Joint Motion of Plaintiff in Error and Defendant In Error to Advance Case to be Heard with No. 140.

Consent of Plaintiff in Error and Defendant in Error in No. 140 to Granting Motion.

Now come the plaintiff in error and the defendant in error, and move the court to advance this cause, to be heard together, and argued as one case, with the case of *The Board of Directors of the Chicago Theological Seminary* v. *The People of the State of Illinois, ex rel., etc.*, No. 140, of this docket.

The assignments of error in both cases which the court is asked to hear together (No. 140 and No. 265) present the same question (and no other). The parties in both cases are the same and are represented by the same attorneys and both concur in the motion.

The facts material to the motion are as follows:

The two cases (No. 140 and No. 265) are writs of error brought to review judgments of the State Supreme

Court (the highest court of the state) affirming judgments of the trial court against the plaintiff in error and in favor of the defendant in error.

Both of the judgments of the trial court affirmed by the State Supreme Court were judgments for general taxes levied on certain real estate of the plaintiff in error, particularly described, (Pr. Rec., No. 140, pp. 20, 21; No. 265, pp. 17, 19), the judgment in No. 140 being for the taxes for the year 1899, and in No. 265, for the taxes for the year 1900.

The plaintiff in error was incorporated under an act of the legislature of Illinois passed in the year 1855, entitled: "An Act to incorporate the Chicago Theological Seminary." (Pr. Rec., No. 140, pp. 26, 27; No. 265, pp. 21-22.) Section 5 of the act was as follows:

> "Sec. 5. That the property of whatever kind or description belonging or appertaining to said seminary shall be forever free and exempt from all taxation for all purposes whatsoever."

The taxes for which the judgments were rendered were levied under the General Revenue Act of Illinois, passed in 1872, and its amendments.

The particular pieces of real estate against which the taxes were levied and the judgments were rendered, were the same in both cases, and the same general facts as to the lands, and the purposes for which they are held and used, are stipulated in both cases,—that they were acquired by the plaintiff in error by gift or purchase, and are held by it for the uses for which it was incorporated, and that the rentals received from them are used for those purposes. (Pr. Rec., No. 140, p. 26; No. 265, p. 20.)

In both cases in the trial court, the plaintiff in error

by objections in writing set up the provision of its charter (Section 5 already quoted) granting it exemption from taxation, and claimed that the Revenue Act of 1872, and the action of the officers of the State in levying the taxes, violated the obligation of its contract with the State of Illinois arising from the charter, and were, for that reason, contrary to Paragraph 1 of Section X of Article I of the constitution of the United States, providing that no state shall pass any law violating the obligation of any contract. (Pr. Rec., No. 140, pp. 16, 20; No. 265, pp. 16, 17.)

The petition for writ of error in both cases set up the same claim as the ground for the writ. (Pr. Rec., No. 140, pp. 64, 65; No. 265, pp. 32, 33.)

The assignments of error in this court in both cases are in substantially the same language, and present the same question (and no other)—whether the General Revenue Act of 1872, as amended, and the action of the state under it in levying the taxes on the particular property (in No. 140, the taxes for 1899, and in No. 265, the taxes for 1900), impaired the obligation of the contract arising from the charter of the plaintiff in error, and was, for that reason, repugnant to the provision of the constitution of the United States; that no state shall pass any law impairing the obligation of a contract. (Pr. Rec., No. 140, pp. 67, 70; No. 265, pp. 35, 38.)

In view of these facts, both plaintiff in error and the defendant in error (who are also the plaintiff in error and the defendant in error in No. 140, and represented by the same attorneys) unite in this motion to advance

No. 265, to be heard together and argued as one case with No. 140.

DAVID FALES and
JOHN J. HERRICK,
Attorneys for Plaintiff in Error.

EDWIN W. SIMS,
FRANK L. SHEPARD,
WILLIAM F. STRUCKMANN,
For Defts. in Error.

The plaintiff in error and defendant in error, in the case of The Board of Directors of the Chicago Theological Seminary *vs.* The People of the State of Illinois, *ex rel.* Samuel B. Raymond, County Treasurer, and *ex officio* County Collector of Cook County, Illinois, No. 140, hereby consent to the granting of the above motion.

DAVID FALES and
JOHN J. HERRICK,
Attorneys for Plaintiff in Error.

EDWIN W. SIMS,
FRANK L. SHEPARD,
WILLIAM F. STRUCKMANN,
For Defts. in Error.

DEC 30 1902
JAMES H. McKENNEY,
Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1902.

THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL SEMINARY, *Plaintiff in Error,* vs. THE PEOPLE OF THE STATE OF ILLINOIS, ex relatione SAMUEL B. RAYMOND, County Treasurer and ex officio County Collector of Cook County, Illinois, *Defendant in Error.*	No. 140.
THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL SEMINARY, *Plaintiff in Error,* vs. THE PEOPLE OF THE STATE OF ILLINOIS, ex relatione SAMUEL B. RAYMOND, County Treasurer and ex officio County Collector of Cook County, Illinois, *Defendant in Error.*	No. 265.

In Error to the Supreme Court of the State of Illinois.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

JOHN J. HERRICK,
DAVID FALES,
Attorneys for Plaintiff in Error.

THE GUNTHORP-WARREN PRINTING CO., 118 RANDOLPH ST., CHICAGO.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1902.

THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL SEMINARY,
Plaintiff in Error,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS, ex relatione SAMUEL B. RAYMOND, County Treasurer and ex officio County Collector of Cook County, Illinois,
Defendant in Error.

No. 140.

THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL SEMINARY,
Plaintiff in Error,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS, ex relatione SAMUEL B. RAYMOND, County Treasurer and ex officio County Collector of Cook County, Illinois,
Defendant in Error.

No. 265.

In Error to the Supreme Court of the State of Illinois.

STATEMENT.

In these two cases (No. 140 and No. 265) an order was made on the joint motion of both parties advancing No. 265 to be heard and argued as one case with No. 140, on the ground that the two cases involve the same general question.

Both cases are writs of error brought to review judgments of the Supreme Court of Illinois (the highest court of the State) affirming judgments of the County Court of Cook County against the plantiff in error.

Both of the judgments of the trial court affirmed by the State Supreme Court were judgments for general taxes levied on certain real estate of the plaintiff in error, particularly described, (No. 140, Pr. Rec., 20–21; No. 265, Pr. Rec., 17–19), the judgment in No. 140 being for the taxes for the year 1899, and in No. 265, for the taxes for the year 1900.

The plaintiff in error was incorporated under an act of the legislature of Illinois passed in the year 1855, entitled:

"An Act to incorporate the Chicago Theological Seminary." (No. 140, Pr. Rec., 26–27; No. 265, Pr. Rec., 21–22.)

Section 5 of the act was as follows:

"Sec. 5. That the property of whatever kind or description belonging or appertaining to said seminary shall be forever free and exempt from all taxation for all purposes whatsoever."

The charter of incorporation was duly accepted, and, acting on the faith of its provisions, plaintiff in error has acquired, by donation and purchase, the particular real estate on which the taxes in question were levied, and other property, and, in addition, has expended in the erection and purchase of buildings on the real estate owned by it an amount exceeding $200,000, and a large number of students have been and are being instructed by it in pursuance of its charter. (No. 140, Pr. Rec. 26; No. 265, Pr. Rec., 20.)

The taxes for which the judgments of the State Court in the two cases were rendered were levied under the General Revenue Act of Illinois, passed in 1872.

The particular pieces of real estate against which the judgments were rendered, were the same in both cases, and the same general facts as to the purposes for which they were acquired and are held, are stipulated in both cases,—that they were acquired by the plaintiff in error by gift or purchase, and are held by it to promote the objects for which it was incorporated, and that the rentals received from them are used for those purposes. (No. 140, Pr. Rec., 26; No. 265. Pr. Rec., 20.)

In both cases in the trial court, the plaintiff in error by objections in writing set up the provision of its charter (Section 5 already quoted) granting it exemption from taxation, and claimed that the Revenue Act of 1872, and the action of the officers of the State in levying the taxes under it, violated the obligation of its contract with the State arising from the charter, and were, for that reason, contrary to the provision (Paragraph 1 of Section X of Article I) of the Constitution of the United States, that no state shall pass any law impairing the obligation of contracts. (No. 140, Pr. Rec., 16; No. 265, Pr. Rec., 16.)

The assignments of errors in this court in both cases are in substantially the same language, and present the same question (and no other)—whether the General Revenue Act of 1872, and the action of the state under it in levying the taxes on the particular property (in No. 140, the taxes for 1899, and in No. 265, the taxes for 1900), impaired the obligation of the contract arising from the charter of the plaintiff in error. (No. 140, Pr. Rec., 67–70; No. 265, Pr. Rec., 35–38.)

The entire act incorporating plaintiff in error is as follows:

An Act to Incorporate the Chicago Theological Seminary.

Section 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, that Stephen Peet, William Carter, Flavel Bascom, M. A. Jewett, Geo. W. Parkins, Philo Carpenter, Truman Post, John C. Holbrook, Horace Hobart, John J. Miter, Hiram Foote, Joseph Johnston, Harvey D. Kitchell, Alden B. Robbins, Adam S. Kedzie, L. Smith Hobart, Nathan H. Eggleston, Solomon L. Withey, Jesse Guernsey, Joseph E. Beebe, Charles W. Camp, John G. Foote, Richard Hall, Geo. S. F. Savage and their successors be, and they hereby are, created a body politic and corporate, to be styled "The Board of Directors of the Chicago Theological Seminary," and by that name and style to remain and have perpetual succession, with full power to sue and be sued, plead and be impleaded; to acquire, hold and convey property, real and personal; to have and use a common seal; to alter and renew the same at pleasure; to make and alter a constitution and by-laws for the conducting and government of said institution, and fully to do whatever may be necessary to carry out the object of this act of incorporation.

Sec. 2. That the seminary shall be located in or near the City of Chicago. The object shall be to furnish instruction and the means of education to young men preparing for the gospel ministry, and the institution shall be equally open to all denominations of christians for this purpose.

Sec. 3. That the board of directors shall consist twenty-four members, nine of whom shall constitute a quorum for the transaction of business. The directors shall hereafter be elected in accordance with the provisions of the constitution under which they act and shall hold their office until their successors are appointed.

Sec. 4. The board of directors shall have power to appoint an executive committee and such agents as they may deem necessary, and such officers, professors and teachers as the government and instruction of the seminary may require, and prescribe their duties, to remove any of them for sufficient reasons, and prescribe and direct the course of studies to be pursued in the institution; also, to confer

such degrees as are consistent with the object of the institution.

SEC. 5. That the property, of whatever kind or description, belonging or appertaining to said seminary, shall be forever free and exempt from all taxation for all purposes whatsoever.

SEC. 6. This act to take affect and be in force from and after its passage, and it shall be deemed a public act, and shall be construed liberally in all courts for the purposes therein expressed.

The State Supreme Court held that the provision granting the exemption from taxation (Section 5), notwithstanding its broad general language, "refers only to the property *used in immediate connection with* the seminary, and *does not include other property* which may be owned, rented or held by the *said seminary* as an investment, *even though the income thereof is used solely for school purposes.*" (No. 140, Pr. Rec., 54; No. 265, Pr. Rec., 31).

The claim of plaintiff in error, on the other hand, is, that it was the clear intention of the provision to exempt from taxation all property acquired and held by it to promote the objects for which it was incorporated and that the particular property against which the judgments were rendered was therefore exempt.

The following additional facts are material to the questions presented:

Section 3, Article IX of the Constitution of Illinois, adopted in 1848 and in force at the time the charter of plaintiff in error was passed, was as follows (1 Starr & C. Ann. Stats. Ill., p. 85):

"The property of the state and counties, both real and personal, *and such other property as the General Assembly may deem necessary for school, religious and charitable purposes, may be exempted from taxation.*"

The same constitution gave power to the legislature to grant special charters of incorporation for any lawful purpose, including the incorporation of charitable and educational institutions.

In *University* v. *People*, 99 U. S., 309, this court held that under these constitutional provisions the legislature of Illinois had unlimited power to grant by special charter total or partial exemptions from taxation to educational and charitable institutions.

At the time that this constitution was adopted, Illinois was a comparatively new and sparsely settled state, and the manifest purpose of these provisions was to empower the legislature to encourage, by liberal grants of special charters and exemptions from taxation, individual efforts and donations for the establishment and maintenance of educational and other charitable institutions.

Acting under these constitutional provisions, the legislature of Illinois, during the period which followed the adoption of the constitution of 1848, until the constitution of 1870, which first imposed a limitation on the power of the legislature as to the exemptions from taxation, at each succeeding session granted special charters containing exemptions from taxation, total or partial, to different educational institutions. (See Appendix.)

Several of these charters, passed at different sessions, which contain provisions of exemption from taxation *identical in language* with the provision in the charter of plaintiff in error, quoted *supra,*—in such a connection with other provisions that, as plaintiff in error claims (see *infra*), there is no possible room for the only argument on which the State Court based its decision, and it is therefore indisputable that a *total* exemption was intended—are set out in the Appendix filed with this brief. (Appendix, pp. 5-13.)

Other of these charters passed at the same sessions (see Appendix, pp. 2-5), provided *in terms* and by specific language for *partial* exemptions from taxation *identical with the exemption which the Supreme Court of Illinois has held in the two cases before the court was the exemption intended* by the broad general language of the exemption provision in the charter of plaintiff in error.

Thus, at the session next preceding that at which the legislature passed the Act incorporating plaintiff in error—that of 1853—it incorporated the Oregon Union Institute (Appendix, p. 3), granting it a *partial* exemption from taxation by the following specific provision:

"Sec. 16. *The tract of land on which the buildings of the institute may be erected, together with all the furniture, books, and apparatus belonging to said institute,* shall be exempt from all taxes."

So, at the same session at which the charter of plaintiff in error was passed, that of 1855, the Legislature granted a charter to the German School Association of Muscoutah, but limited the exemption from taxation by the following specific provision (Appendix, p. 3):

"Sec. 9. *The school house of the Association, and the fixtures in the same, the books and library of the Association, and the lot of ground on which their school house is or may be erected,* shall be exempt from taxation."

So, at each of the different sessions at which the charters referred to *supra,* containing exemptions from *taxation identical with* that of plaintiff in error, were granted, like *specific partial* exemptions from taxation were made in the charters incorporating other educational institutions. (See Appendix, pp. 3-5 and 5-13.)

In 1870 a new Constitution was adopted, and, in substitution for the provision of the previous Constitution, that

of 1848, under which these different grants of special charters containing exemptions from taxation were made, the following provision was adopted (Article 9, Sec. 3; 1 Starr & C. Ann. Stats. Ill., p. 171; Stats. Ills. 1874, p. 75):

"The property of the state, counties and other municipal corporations, both real and personal, *and such other property as may be used* EXCLUSIVELY *for agricultural and horticultural societies, for* school, religious, seminary and charitable PURPOSES, may be exempted from taxation; but such exemption shall be only by general law."

At the next session of the legislature, after the adoption of this new Constitution, that of 1872, the legislature began the work of a complete revision of the statutes of the state to conform to the provisions of the new Constitution. At that session a new and revised Revenue Act was adopted. (3 Starr & C. Ann. Stats. Ill., pp. 3398, 3399):

This Act, so far as material, was as follows:

"Sec. 1. That the property named in this section *shall be* assessed and taxed, *except* so much thereof *as may be, in this Act, exempted.*

First. *All real and personal property* in this State."

* * *

"Sec. 2. All property described in this section, to the extent herein limited, shall be exempt from taxation, that is to say:

First. All lands donated by the United States for school purposes, not sold or leased. All public school houses. All property of institutions of learning, including the real estate on which the institutions are located, *not leased by such institutions or otherwise used with a view to profit.* * * *

Seventh. All property of institutions of purely public charity, when *actually and exclusively used for such charitable purposes, not leased or otherwise used with a view to profit;* and all free public libraries."

So far as appears, no property of plaintiff in error was taxed prior to the passage of this act, or until the year 1878, a period of more than twenty years.

In the year 1878, the State authorities, acting under the Revenue Act of 1872, quoted *supra,* levied general taxes for that year on a number of the pieces of real estate, against which the judgments in the case before the court were rendered. The objection was made to the entry of judgment for these taxes that the property was exempt from taxation under the charter provision. This objection *was sustained by the court,* and a judgment was accordingly rendered in favor of the plaintiff in error.

No appeal was taken, or writ of error sued out by the State to reverse this judgment. (No. 140, Pr. Rec., 41.)

In like manner, in each of the years 1880, 1881, 1888, 1889, 1890, 1891, 1893, 1894 and 1895, like general taxes were levied on the same and other property, and, on application to the County Court for judgment for the taxes, the same objection was made, and a like judgment in favor of plaintiff in error was rendered. (No. 140, Pr. Rec., 29-41.)

In the same way, in each of these years, no appeal was taken or writ of error sued out by the State to review these nine different judgments in favor of plaintiff in error. (No. 140, Pr. Rec., 41.)

In the year 1896, general taxes were again levied on the same property and, on application to the County Court for judgment for the taxes, the same objection was made by plaintiff in error, and a like judgment in its favor was rendered. (No. 140, Pr. Rec., 43.)

In this case, however, the State, instead of acquiescing in the judgment, as in the previous years, took an appeal to the Supreme Court of the State.

On this appeal the State Supreme Court decided adversely to plaintiff in error, holding that the particular

property on which the taxes were levied was not within the exemption provision (*People ex rel.* v. *Chicago Theological Seminary,* 174 Ill., 177), but no final judgment was rendered by that court, the case *being remanded to the County Court for further proceedings* in conformity with the opinion. (174 Ill., 183.)

Section 83 of the Illinois Practice Act (Ch. 110, 3 Starr & C. Ann. Stats. Ill., p. 3111) provided that if a case was remanded by the Supreme Court to the court in which it was tried, the Supreme Court should issue its mandate reversing and remanding the case, and that *on the filing in the trial court* of a copy of the order remanding the case *and notice to the opposite party* "the cause or proceeding *shall be reinstated.*"

Section 84 provided:

"If neither party shall file such transcript *within two years* from the time of making such final order of the Supreme Court or Appellate Court, as the case may be reversing any judgment or proceeding, the cause shall be *considered as abandoned and no further action shall be had therein.*"

It appears from the record in No. 140 that the opinion in the case in 174 Ill. was filed June 18, 1898, and that at the date of the trial in that case, October 24, 1900, *more than two years after the opinion was filed, no transcript of the order remanding the case had ever been filed in the County Court.* (No. 140, Pr. Rec., 43.)

As a consequence, the decision of the State Supreme Court in 174 Ill. has never been brought to this court for review, for the reasons (1) that the judgment of the State Supreme Court, not being a final judgment, the plaintiff in error could not sue out a writ of error to review it, and (2) that the State did not prosecute the case further in the

County Court, but *abandoned it, and no judgment has therefore been rendered at any time against plaintiff in error for the particular taxes involved in the case.*

In the year 1899, the State made a like levy on the same and other property, for the general taxes of that year, being the taxes for which the judgment in No. 140 was rendered.

On the application for judgment for these taxes, plaintiff in error made the objection that under its charter the property was exempt from taxation, and that the action of the State in levying the taxes, impaired the obligation of the contract of exemption. (No. 140, Pr. Rec., 16.)

The objection was overruled and judgment was rendered against plaintiff in error. On appeal from this judgment, the State Supreme Court affirmed the judgment, holding, on the authority of its previous decision in *People ex rel.* v. *Chicago Theological Seminary*, 174 Ill., 177, that the charter provision only exempted "the property *used in immediate connection with* the seminary" (the school buildings and grounds), and did not therefore include the particular property on which the taxes were levied. (No. 140, Pr. Rec., 54; *Chicago Theological Seminary* v. *People*, 189 Ill., 439.)

This judgment is the judgment in No. 140.

Pending the writ of error from this judgment, the State, in like manner, levied on the same property the general taxes for the year 1900, being the taxes for which the judgment was rendered in No. 265.

On the application for judgment in the County Court, the same objection was made and overruled, and judgment was entered against plaintiff in error. (No. 265, Pr. Rec., 16, 19.)

On appeal from this judgment the State Supreme Court affirmed the judgment on the authority of its previous decisions in *People ex rel.* v. *Chicago Theological Seminary,* 174 Ill., 177, and *Chicago Theological Seminary* v. *People,* 189 Ill., 439. (No. 265, Pr. Rec., 31; *Chicago Theological Seminary* v. *People,* 193 Ill., 619.)

This judgment is the judgment in No. 265.

SPECIFICATION OF ERRORS RELIED ON.

I.

That by clause 5 of the charter of plaintiff in error, granted to it by the State of Illinois, all property of every kind and description of the plaintiff in error was exempt from all taxes of every kind and description, and that the General Revenue Act of the State of Illinois, approved March 30, 1872, and in force July 1, 1872, entitled: "An Act for the Assessment of Property and for the Levy and Collection of Taxes," with its amendments, under which the said judgment of the County Court of Cook County, Illinois, in said cause, against the lands of the plaintiff in error was rendered, was an impairment of the obligation of the contract between the State of Illinois and this plaintiff in error, arising from said charter, and that the said General Revenue Act of the State of Illinois violated Clause 1, Section 10, Article 1, of the Constitution of the United States, and that by reason thereof, the said Supreme Court of Illinois erred in rendering judgment against the plaintiff in error. (Assignment I, No. 140, Pr. Rec., 67-68; No. 265, Pr. Rec., 35.)

II.

That the said Supreme Court of Illinois erred in not holding that the charter of the said plaintiff in error, granted to it by the state of Illinois, exempted from taxation, under the laws of the State of Illinois, the property of the plaintiff in error, against which judgment was rendered by the County Court of Cook County, in said cause, and that by reason thereof the General Revenue Act of the State of Illinois, approved March 30, 1872, and in force July 1, 1872, entitled: "An Act for the Assessment of Property and for the Levy and Collection of Taxes," under which the taxes for which said judgment was rendered were levied, and the action of the officers of the State of Illinois thereunder, impaired the obligation of the contract between the State of Illinois and the plaintiff in error arising from the charter granted to the plaintiff in error by the State of Illinois, and was thereby repugnant to the Constitution of the United States, and in not reversing said judgment of the said County Court of Cook County. (Assignment IV, No. 140, Pr. Rec., 68-69; No. 265, Pr. Rec.,36.)

BRIEF OF ARGUMENT.

I.

THIS COURT HAS JURISDICTION TO REVIEW THE JUDGMENT OF THE STATE COURT, AND, IN THE EXERCISE OF THAT JURISDICTION, HAS POWER TO DETERMINE THE QUESTION AS TO THE CONSTRUCTION TO BE GIVEN TO THE PROVISION IN THE CHARTER OF PLAINTIFF IN ERROR EXEMPTING ITS PROPERTY FROM TAXATION. (Argument, pp. 35-46.)

1. In both cases the claim was made by plaintiff in error, in the State Court, that the subsequent revenue law, and the action of the State officers in levying the tax under it, violated the obligation of its contract of exemption from taxation, and the writs of error, brought to review the judgments of the State Supreme Court deciding the question thus raised adversely to plaintiff in error, present a federal question which this court has jurisdiction to determine. (Argument, *infra*, pp. 35-37.)

In the following cases, in which the jurisdiction of this court was invoked, on the ground that the subsequent law and the action of the state officers in levying a tax under it, impaired the obligation of the contract of exemption, this court sustained the jurisdiction and enforced the obligation of the contract. (Argument, pp. 36-37):

University v. *People*, 99 U. S., 309.

Asylum v. *New Orleans*, 105 U. S., 362.

State Bank of Ohio v. *Knoop*, 16 How., 378.

Home of the Friendless v. *Rouse*, 8 Wall., 430.

The Washington University v. *Rouse*, 8 Wall., 439.

Wilmington Railroad v. *Reid,* 13 Wall., 266.
Humphrey v. *Pegues,* 16 Wall., 244.
Pacific Railroad Co. v. *Maguire,* 20 Wall., 36.

2. The determination of the federal question presented, involves the decision of the question as to the proper construction of the exemption provision of the charter of plaintiff in error, and this court will, therefore, determine for itself, in the exercise of its appellate and revisory jurisdiction, the question of construction presented, irrespective of the decision made by the State Supreme Court. (Argument, pp. 37–39.)

University v. *People,* 99 U. S., 309.
Jefferson County Bank v. *Skelly,* 1 Black, 443.
Bridge Proprietors v. *Hoboken,* 1 Wall., 144.
State Bank v. *Knoop,* 16 How., 369.
Delmar v. *Insurance Co.,* 14 Wall., 668.
Houston & Texas Central R. R. Co. v. *Texas,* 177 U. S., 66, 77.
Columbia Water Power Co. v. *Columbia Electric Street Railway Co.,* 172 U. S., 475, 487.

3. In both the cases before the court, the State Supreme Court expressly decided the federal question involved adversely to the plaintiff in error, and such decision was necessary to the judgment rendered. (Argument, pp.39–46.)

1. *As to No. 265,* the *sole* question presented or passed on, either in the State trial court or in the State Supreme Court, was the single question, whether the subsequent state revenue law and the action of the state officers under it, in levying the particular tax, impaired the obligation of the contract. (See the opinion of the State Supreme Court in No. 265, Pr. Rec., 31; *Chicago Theological Seminary* v.

People, 193 Ill., 619; see, also, the certificate of the Chief Justice of the State Supreme Court in No. 265, Pr. Rec., 31-32; Argument, pp. 39-41.)

(1.) It is true that its two previous decisions (*People* v. *Chicago Theological Seminary*, 174 Ill., 177, and *Chicago Theological Seminary* v. *People*, 189 Ill., 439), were referred to by the State Supreme Court, in the opinion in No. 265, as controlling on the question, but the *judgments* in those cases were not in the record, and the *decisions* were referred to, not as *res adjudicata*, but only as previous *decisions of the same court* on the particular question, binding on it under the doctrine of *stare decisis*. (Argument, p. 40.)

(2.) It also appears from the opinion in *People* v. *Chicago Theological Seminary*, 174 Ill., 177, that the particular case was reversed *and remanded* by the State Supreme Court "*for further proceedings* in accordance with the views herein (in the opinion) expressed," and for that reason, not being a *final* judgment, it was not subject to review by this court. (Argument, pp. 40-41.)

Brown v. *Baxter*, 146 U. S., 619.
Rice v. *Sanger*, 144 U. S., 197.
Johnson v. *Keith*, 117 U. S., 199.

(3.) As to *Chicago Theological Seminary* v. *People*, 189 Ill., 439 (No. 140), it also appears from the record that both at the time of the judgment in the County Court and of the decision by the State Supreme Court in No. 265, a writ of error had been sued out from this court to review the judgment, and the case was pending in this court.

2. *As to No. 140*, the record shows that in the State Trial Court, in addition to the objection that the levy of the tax was

in violation of the obligation of the charter provision, the plaintiff in error *also set up*, by its objections, different prior judgments *rendered by the State County Court in favor of plaintiff in error* on application for judgments against the same property for taxes in different previous years, which *sustained* the objection that the levy of the tax was in violation of the obligation of the charter of plaintiff in error, and from which no appeals or writs of error were taken, and claimed that these prior judgments *of the State County Court* were *res adjudicata* of the question as to the proper construction of the charter provision. (No. 140, Pr. Rec., 17-19; Argument, pp. 41-46.)

In the State Supreme Court, in No. 140, *both* of these objections were again raised and passed on by the court in its opinion.

It appears from its opinion (No. 140, Pr. Rec., 54; *Chicago Theological Seminary* v. *People,* 189 Ill., 439), in connection with the other facts shown in the record (Argument, pp. 43-45):

(1) That the State Supreme Court expressly passed on the question whether the subsequent law impaired the obligation of the contract, and held, following its previous decision in *People ex rel.* v. *Chicago Theological Seminary* (174 Ill., 177), that it did not, for the reason that the charter provision as construed by it did not cover the property on which the particular taxes were levied. (No. 140, Pr. Rec., 54; 189 Ill., at p. 442.)

(2) That the question as to the effect of the former decision in *People* v. *Chicago Theological Seminary* (174 Ill., 177), other than as a previous decision on the question of construction, only arose in the case, and was only considered by the court, *in answer to the objection made by plaintiff in*

error that the former judgments in the County Court were conclusive of the question. (No. 140, Pr. Rec., 17-19; 54-55.)

(3) The only *facts* as to the case in 174 Ill., shown in the record in No. 140, were that the court in that case "filed the opinion," "as set forth *in 174 Ill.,* at p. 177, and *the date* it was filed, and that at the time of the trial, which was more than two years after the filing of the opinion, the case had not been redocketed in the trial court and had therefore been *abandoned.* (No. 140, Pr. Rec., 43.) The *judgment,* if any, entered by the State Supreme Court in pursuance of its *opinion, was not given in evidence or otherwise referred to in the record,* as would have been necessary even to present the claim that the former *judgment* in the case was *res adjudicata* as to the question.

(4) It appeared in the case that the entire proceeding, in which the decision in *Chicago Theological Seminary* v. *People* (174 Ill.), was rendered, *had been abandoned by the State by its failure to redocket the case in the trial court within the time prescribed by Section 84 of the State Practice Act,* which provides (Ch. 110, Starr & C. Ann. Stats. Ill., p. 3111):

"If neither party shall file such transcript within two years from the time of making the final order of the Supreme Court or appellant (appellate) court, as the case may be, reversing any judgment or proceeding, the cause shall be considered as abandoned, and no further action shall be had therein."

The case was, therefore, as effectually out of court as if it had been, in fact, redocketed and dismissed for want of prosecution.

Koon v. *Nichols,* 85 Ill., 155.

See, also, the certificate by the Chief Justice of the State Supreme Court in No. 140, Pr. Rec., 67. (Argument, p. 46.)

II.

THE PROVISION IN THE CHARTER OF PLAINTIFF IN ERROR EXEMPTED FROM TAXATION THE PROPERTY IN QUESTION, AND, FOR THAT REASON, THE LAW UNDER WHICH THE TAXES WERE LEVIED, IMPAIRED THE OBLIGATION OF THE CONTRACT AND THE JUDGMENT SHOULD, THEREFORE, BE REVERSED. (Argument, pp. 47-97.)

The Act is entitled: "An Act *to incorporate* the Chicago Theological Seminary."

Section 5, the exemption provision, is as follows:

"Sec. 5. That the property, *of whatever kind or description, belonging or appertaining to said seminary,* shall be forever free and exempt from all taxation for all purposes whatsoever."

For the Act in full, see Statement, *supra.*

The sole question presented by the decision of the State Supreme Court (*People ex rel.* v. *Chicago Theological Seminary,* 174 Ill., 177, is: To what did the words "said seminary" in the exemption provision refer—to the *institution* incorporated by the Act, or to the *place* where instruction was to be given—the school buildings and grounds?

1. The words, "said seminary," in the exemption provision, referred to the corporation created by the Act, and designated in the title as the Chicago Theological Seminary, and not to the school buildings and grounds, as held by the State Supreme Court, and this being so, the exemption provision indisputably exempted from taxation the property against which the judgments were rendered. (Argument, pp. 51–65.)

1. The first mention of "the seminary" in the Act is in the title, "An Act *to incorporate* the Chicago Theological

Seminary." (No. 140, Pr. Rec., 26; No. 265, Pr. Rec., 21.)

It is well settled that the title of an act may properly be referred to to ascertain the legislative intention. (Argument, p. 51.)

Holy Trinity Church v. *United States,* 143 U. S., 457, 462.
Smythe v. *Fiske,* 23 Wall., 374, 380.
Heirs of Emerson v. *Hall,* 13 Pet., 409, at 413.
Bell v. *Mayor,* 105 N. Y., 144.
President, etc., of St. Vincent's College v. *Schaefer,* 104 Mo., 261.

There can be no room for question that this first mention of the "Chicago Theological *Seminary*" referred to the institution incorporated by the Act, and not "to the *property,*" the school buildings, etc. (Argument, pp. 51-52.)

See,

Heirs of Emerson v. *Hall,* 13 Pet., 409.
Bell v. *Mayor, etc., of N. Y.,* 105 N. Y., 139.
President, etc., of St. Vincent College v. *Shaefer,* 104 Mo., 261.

2. Section 4 (the section immediately preceding the one in question) provides "that the board of directors shall have power to appoint * * * such *officers,* professors and teachers, as the *government* and instruction of *the seminary* may require, and prescribe their duties, and remove any of them for sufficient reason."

Here, again, it is clear that the word "seminary" refers to the institution which was incorporated by the Act. It was this institution, and not the "particular *property*"—

the school buildings, etc.—which was to have "officers" for its "government" and "professors and teachers" to give "instruction," whom the board of directors of the incorporated institution were authorized by this section to appoint and remove and whose duties they were to prescribe.

3. It is true that, as was customary in the early charters of incorporation, it was provided in section 1 that the corporate name should be "*The Board of Directors* of the Chicago Theological Seminary," and that in the exemption provision this full corporate name is not used.

(1.) Similar corporate names are found in all the earlier charters; those creating railroad corporations, incorporated banks, etc., as well as charitable institutions, such as "The President and Board of Directors of," etc. But it was not therefore necessary or customary to always use the cumbersome full name when the corporation was referred to. (Argument, pp. 53-56.)

Angel and Ames on Corporations, Sec. 99.

On the contrary, instead of using the full corporate name, "*The Board of Directors of* the Chicago Theological Seminary," it was natural and appropriate to use the words "*said* seminary" to designate the incorporated institution referred to in the title of the act as "The Chicago Theological Seminary," and again in section 4 as "the seminary." (Argument, pp. 56-57.)

Marine Bank of Baltimore v. *Bias,* 4 Har. & J. (Md.), 338.

President and Faculty of St. Vincent's College v. *Schaefer,* 104 Mo., 261.

Nobles v. *Hamline University,* 46 Minn., 316.

This use of the shorter designation instead of the full,

formal name, is illustrated (a) in the very title of the Act; (b) in the proceedings in the County Court, in the return of delinquent property (No. 140, Pr. Rec., 12); (c) in the opinion of the Supreme Court of Illinois, in No. 140 (Pr. Rec., 54).

(2.) In fact, that the general words "the Chicago Theological Seminary" were appropriate to designate the incorporated institution is recognized in the very name itself, "The Board of Directors *of* the Chicago Theological Seminary." (Argument, pp. 54-55.)

The seminary buildings had no board of directors. The Board of Directors referred to in this corporate *name* as "The Board of Directors *of* the Chicago Theological Seminary," were the directors of the incorporated institution created by the Act and referred to in its title.

4. There is only one other mention of "the seminary" in the act.

Section 2 provides (No. 140, Pr. Rec., 27):

"Sec. 2. That *the seminary* shall be located in or near the City of Chicago. The *object* shall be to furnish instruction and the means of education to young men preparing for the gospel ministry," etc.

The Supreme Court of Illinois bases its entire conclusion on the words "the seminary" in this section. (*Chicago Theological Seminary* v. *People,* 174 Ill., at p. 182; Argument, p. 58.)

The Court say:

"The second section of the charter mentioning certain *property* to be located in or near the City of Chicago, and which is denominated 'the seminary,' we think the words in the fifth section, 'said seminary,' refer *to that particular property.*"

(1) The court *assumes* without giving any reasons that

the word "seminary" in section 2 refers to "certain *property*"—the school buildings and grounds. (Argument, pp. 59-62.)

This assumption is erroneous:

First. We have already seen that the word "seminary" was in fact three times used in other provisions of the Act to designate the incorporated institution, and the rule is that the same word being used in section 2 it will be presumed that it was there used in the *same* sense, unless a contrary intention is shown.

Second. In determining the sense in which the word "seminary" was used in the sentence, "That the seminary shall be located in or near the City of Chicago," the immediately following sentence is most significant. It reads: "The *object* shall be to furnish instruction and the means of education," etc.

Here is a clear reference to the "seminary" referred to in the immediate preceding sentence. It is equally clear that "the particular *property*"—the school buildings and grounds—was not referred to. "The *object*" referred to—"to *furnish* instruction and the means of education," etc.,—was the object of the *incorporated institution* and not of the mere buildings, etc.

This was recognized in the opinion in 174 Ill., p. 179. (Argument, p. 60.)

Third. The assumption of the opinion that "the seminary" mentioned in section 2 was "particular property" is apparently based on the fact that the word "located" is used in connection with it, and that therefore the *property* —the school buildings—and not the institution incorporated by the Act was referred to.

a. As we have seen, in both the title of the Act and in section 4 "the seminary" was clearly used as referring to the

institution incorporated by the Act. And it was therefore presumably used in the same sense in section 2, unless the use of the word "located" excludes and necessarily gives it the meaning "school buildings."

b. So far from the word "located" necessarily referring to the school buildings, it was a proper and customary use of the word to use it as referring to an incorporated institution such as was created by the Act.

c. The precise word "located" is frequently used in charters and other statutes as applied to corporations. At common law it was an attribute of every corporation that it had a *locality*. Its *locality* was the place where it carried on its operations—where it did business.

Angel and Ames on Corporations, Sec. 103.

Sangamon & Morgan R. R. Co. v. *County of Morgan*, 14 Ill., 163.

Bristol v. *Chicago & Aurora R. R. Co.*, 15 Ill., 436.

Charlotte National Bank v. *Morgan*, 132 U. S., 141.

(2) But even if it is assumed that the words "the seminary" in the particular section 2 referred to "certain property," the school buildings, etc., it does not follow, as the court assumes, that the words "said seminary" in the subsequent section 5, which related to a wholly different subject, also referred to this "property," and not to the incorporated institution. (Argument, pp. 62-65.)

Whatever meaning is given to the words "the seminary" in section 2, the question is in what sense was "said seminary" used in section 5?

Our contention is that even if the words "the seminary" in section 2 referred to the school building, the words "said semi-

nary," as used in section 5, clearly referred to the incorporated institution designated in the previous provisions as "The Chicago Theological Seminary" and "the seminary," and not to the school buildings.

First. Giving to the word "belonging" in section 5 its primary and ordinary meaning of *ownership*, the words "said seminary" in the same section could only refer to the corporation. (Argument, pp. 63-65.)

In *Gammon* v. *Gammon*, 153 Ill., 41, the court, referring to the word "belong," say (p. 47):

"The primary meaning of the word 'belong' as given by lexicographers is *'to be the property of.'* Such also is the *common* and *ordinary* meaning of the word."

The State Court recognizes in its opinion that it was necessary to its conclusion to give to the word "belong" a different meaning from this—its "primary" and "common and ordinary" meaning. The Court say (174 Ill., p. 182):

"It is undoubtedly true that the word 'belonging' *may* mean ownership and very often does, but that is not its only meaning. Webster's International Dictionary defines it *'That which is connected with* the *principal* or *greater* thing; an *appendage;* an *appurtenance.'*"

a. It is not the rule, as is here assumed, that because a word *may* have a different meaning from its primary and ordinary meaning it should therefore be given that meaning.

On the contrary, the rule is that the word should be given its primary and ordinary meaning unless other provisions of the Act show an intention to the contrary.

b. As we shall show more fully hereafter, if the word "belonging" is given the meaning given it by the definition quoted, it would give an unreasonable and absurd meaning to the provision, and one clearly not intended,—a mean-

ing which would exempt only the property "connected with the *principal thing*"—the school buildings—as "an appurtenance," leaving the "*principal thing*," the school buildings and grounds, not exempt.

c. That the word "belonging" was used in the sense of ownership is also shown by reference to the provisions of many other similar charters passed by the Legislature of Illinois at the same and other sessions, in which there were exemptions in the identical language, and the context shows that the word "belonging" could only be construed as being used in the sense of ownership. (See Appendix, pp. 5-13.)

Second. That even if "the seminary" in section 2 is given the meaning "the school buildings," the words "said seminary" in section 5 referred to the incorporated institution is further shown by the additional *points* stated *infra* as sustaining our contention.

2. Our construction of the exemption provision is forcibly confirmed by the adjudicated cases, in which like provisions were construed, and it was held, on grounds peculiarly pertinent to the case before the court, that similar general words, "belonging to" and "the college," "the institution," "the asylum," etc., referred to the corporation created by the act, and that all the property of the corporation was, therefore, exempt. (Argument, pp. 65–69.)

See the following cases cited at length in Argument, (pp. 66-69.)

County of Nobles v. *Hamline University,* 46 Minn., 316.

Asylum v. *New Orleans,* 105 U. S., 362.

President and Faculty of St. Vincent's College v. *Schaefer,* 104 Mo., 261.

3. If the meaning is given to the words "said seminary," and "belonging to," in the exemption provision, which the State Supreme Court found it necessary to give to them to reach the conclusion it did, the result is that the provision, as a whole, is given an unreasonable, and, in fact, absurd meaning. (Argument, pp. 69–73.)

(1) Substituting for the words actually used in section 5 ("said seminary" and "belonging to") the words which the Supreme Court of Illinois holds (*People* v. *Chicago Theological Seminary*, 174 Ill., 177), express the meaning it was intended they should have, *only* the particular property "*connected with* the *principal* or *greater* thing"—as "an appendage or appurtenance" or "appurtenant *to*" —"the particular property" would be exempt.

The "*principal* or *greater* thing," "the particular *property*" referred to as "the seminary"—the school buildings and grounds,—"with" which the property exempted is defined as "connected" as "an appendage" or an "appurtenance," would not be exempt, but, on the contrary, would be excluded from the exemption by the very language of the provision. (Argument, pp. 70-71.)

(2) What then would be exempt? It is plain that other *real estate* would not be "connected with" "the particular property" known as the seminary—the school buildings and grounds—as "an appendage" or an "appurtenance." (Argument, p. 71.)

Accordingly the State, acting on this decision, has taxed all the real estate *other than* the school buildings and grounds, and the taxes thus levied are the very taxes which the State Supreme Court has sustained as not within the exemption provision. (No. 140, Pr. Rec., 16-22; No. 265, Pr. Rec., 16-19.)

(3) It follows that, giving the language of the exemption

provision *the emaning given it by the State Supreme Court*, the only property which it was intended to exempt was *personal* property.

And in this view the only property which could by any possibility be within the exemption—giving its language the meaning given it by the State Supreme Court—would be *the furniture and apparatus in* the school buildings. (Argument, p. 72.)

It is familiar law that in giving construction to a statute an absurd or unreasonable meaning will not be attributed to the legislature if the language admits of any other construction.

Lau Ow Bew v. *United States*, 144 U. S., 47, 59.
People ex rel. v. *Gaulter*, 149 Ill., 39.

4. The decision of the State Supreme Court, in both cases, is based on a construction of its previous decision in 174 Ills., which gives to the exemption provision a meaning wholly different from the meaning given it by the same court in its opinion in 174 Ill., and one which it is impossible to derive from the words of the provision (Argument, pp. 73–75.)

When, in the two subsequent cases (the cases before the court), the state court, in applying its decision in 174 Ill., 177, came to define its previous construction in a form which would include in the exemption the property which had not been taxed, and exclude the property which had been, *an entirely new and different provision, wholly inconsistent with its actual decision in 174 Ill., was evolved.* (See No. 140, Pr. Rec., 54; No. 265, Pr. Rec., 31.)

As the result of this process of construing, in the opinions in the two cases before the court, the previous *decision*, which gave a construction to the exemption provision, the words

"belonging or appertaining to" in the provision in question are given the meaning "*used in immediate connection with,*" a meaning which they do not have either in the definitions adopted in 174 Ill., or in any definition given by any lexicographer. (Argument, p. 75.)

5. The construction of the State Supreme Court is based wholly on the erroneous view that, instead of construing the provision of exemption in a fair and liberal sense, so as to promote the charitable object for which the corporation was formed, it should be construed narrowly by applying the rules of strict construction, and that the express provision of the charter that "this act shall be construed liberally in all courts," should be given a construction contrary to its plain intention, which would in fact render it wholly meaningless. (Argument, pp. 75-85.)

Section 6 is as follows:

"Sec. 6. This act to take effect and be in force from and after its passage, and it shall be deemed a *public* act, and *shall be construed liberally in all courts* for the purposes therein expressed."

(1) The rule of strict construction does not apply to exemptions in favor of charitable corporations, but such exemptions should be construed liberally, to promote the charitable object for which the corporation was created. (Argument, pp. 76-81.)

Yale University v. *New Haven,* 71 Conn., 316.

Phillips Academy v. *Andover,* 175 Mass., 118.

Association for Colored Orphans v. *Mayor,* 104 N. Y., 581.

People v. *Sayles,* 50 N. Y. Supp., 8.

Long Branch Firemen's Relief Ass'n v. *Johnson,* 62 N. J. L., 625.

Sisters of Charity v. *Township of Chatham*, 52 N. J. L., 373.
State v. *Fisk University*, 87 Tenn., 233 .
M. E. Church v. *Hinton*, 92 Tenn., 88.

(2) Whatever the rule in the absence of an express provision in the charter—whether the rule of strict construction applies to an exemption provision in the charter of a charitable corporation or not—the legislature of Illinois, in granting this charter, expressed its intention (in section 6) not to leave the question open, by making the express provision on the subject, that the Act should be "*construed liberally in all courts.*" (Argument, pp. 81-83.)

For cases in which under similar statutory provisions, either abolishing the rule of strict construction as to all statutes, or providing that it shall not apply to particular statutes, the rule of liberal construction was held to apply in giving a construction to criminal and penal statutes, see

Commonwealth v. *Davis*, 12 Bush (Ky.), 240.
People v. *Soto*, 49 Cal., 67.
Hankins v. *People*, 106 Ill., 628.
Maxwell v. *People*, 158 Ill., 248.
Peterson v. *Currier*, 62 Ill. App., 163.

For a case in which a similar charter provision was referred to as requiring a liberal construction of a provision in the charter of Brown University, exempting its property from taxation, see

Brown University v. *Granger*, 19 R. I., 704.

(3) The construction of this provision by the State Supreme Court (174 Ill., at p. 181), that the word "purpose" in section 6 referred to the *intention*

of each provision, and that, before the rule of liberal construction can be applied, this *intention* must be *first ascertained, as to each provision,* by applying the ordinary rules of construction, *including the rule of strict construction,* would render the provision wholly meaningless. (Argument, pp. 84-85.)

6. The decision of the State Supreme Court is not only based on the erroneous view that the rules of strict construction apply, but on the wholly erroneous assumption, that under these rules "if the language (of a provision) is capable of a broader, or more restricted meaning, the latter must be adopted." Such is not the effect of the rules of strict construction, even on the assumption that they apply, but on the contrary, the words used, if "capable of" two meanings, should be given their primary and ordinary meaning in the absence of other language showing that a different meaning was intended, and such meaning as will best express the legislative intention. (Argument, pp. 85–89.)

Starting with this assumption as to the *effect* of the rule of strict construction (which we shall show is clearly erroneous), as the basis of its reasoning, the State Supreme Court finds that the two words "seminary" and "belonging," being "capable of" a different meaning, that meaning "*must* be adopted."

(1) This assumption as to the meaning of the rule of strict construction eliminates all consideration of the actual *intention* of the Legislature, or of the reasonableness of the particular meaning, and makes the mere fact that the word is "capable of" the two meanings, and that the one is "more restricted" then the other, conclusive of the question. (Argument, pp. 86-87.)

This assumption of the court as to the meaning of the rule of strict construction is wholly erroneous.

See authorities cited *infra.*

(2) The rule of strict construction does not require that if the language used "admits of two meanings," either one or the other of these two meanings "*must* be" adopted, or in any way change or override the other rules of construction, including the well settled rule that, where a word admits of two meanings, the natural and ordinary meaning should be adopted, in the absence of other provisions showing a contrary *intention.* (Argument, pp. 87-89.)

Endlich on the Interpretation of Statutes, Secs. 337, 466.

U. S. v. *Winn,* 3 Summ., 209 (quoted with approval in Black on Interpretation of Statutes, p. 290).

U. S. v. *Hartwell,* 6 Wall., 385, at p. 395.

Meadowcraft v. *People,* 163 Ill., 56, at p. 70.

7. The construction of plaintiff in error does not "extend the meaning of the words used, by implication," as erroneously held by the State Supreme Court. (Argument, p. 89.)

As we have already pointed out, to give the words "said seminary" the meaning for which we contend is, in any view, only to give to "seminary" the meaning it indisputably has in the title of the Act, and also in the preceding sections 1 and 4, and does not, therefore, "extend the meaning of these words by implication" or otherwise.

8. The construction of plaintiff in error is further decisively confirmed by a consideration of other similar charters containing provisions for exemption from taxation passed at the same and other sessions. (Argument, pp. 90–97.)

We have printed, and file with this brief as an Appendix, the material provisions of many of these charters, as forcibly and in fact decisively confirming our construction of the exemption provision in question.

That it is proper to refer to these other charters, passed by the same legislature, as an aid in ascertaining the meaning it was intended the words used in the particular provision should have, and as illustrating the application of the rule, see (Argument, pp. 90-91).

Vane v. *Newcombe*, 132 U. S., 220.

23 Am. & Eng. Ency. of Law, under the title "Statutes," p. 311.

Chase v. *Lord*, 77 N. Y., 1, at 18-19.

Middleton v. *Greeson*, 106 Ind., 18, at 24.

Levering v. *Philadelphia, Germantown & Norristown R. R. Co.*, 8 Watts & S., 459, at 463.

Reiche v. *Smythe*, 13 Wall., 162.

(1) On reference to the different charters passed by the same legislature, containing provisions for exemption from taxation, it will be seen that there are many passed at different sessions which provide by specific language for a *partial* exemption from taxation identical (or substantially so) with the exemption the State Court holds was *intended* by the provision in question. (See Appendix, pp. 1-5, and Argument, pp. 91-93.)

These provisions show that when the Legislature of Illinois made a *partial* exemption, such as the State Court has held was intended by the provision in question, it used specific and particular language to express that intention.

(2) We find the same provision for exemption from taxation, *in the identical language*, with the same title to the Act, a like corporate name, etc., as in the charter of plaintiff in error, in different charters incorporating similar educational institutions (including the Galena Theological Seminary, The Lake Forest University, etc.), passed by the

Legislature of Illinois *at the same and other sessions,* both before and after, in which there was no section like section 2, or other provision on which to base the reasoning which is the sole ground of the conclusion of the Supreme Court of Illinois. (See Appendix, pp. 5-13.)

Not only this, but in several of these different charters we find such references to the word "seminary" in other provisions as conclusively shows that the corporate entity was intended to be described by it. (See Appendix, pp. 6, 8, 12.)

It follows that, to sustain the construction of defendant in error, it must be held that, to express in the charter of plaintiff in error the partial and narrow exemption claimed, the legislature used the *identical language* which it had used, and continued to use, in *other* charters, to express a *total* exemption. (See Argument, pp. 94-96.)

(3) In a number of the special charters, passed at different sessions, the same word "located" (on which, as we have seen, the State Court bases its conclusion that "the seminary" in section 2 referred to the school buildings) is used in the *first* section in a connection which necessarily refers to the institution incorporated by the Act instead of the school buildings. (See Appendix, pp. 13-15.)

The only difference in the charter in question is that the provision as to the *location* is put in a separate section in connection with *the object.* But the word "located" was manifestly used in the same sense as in the other charters. (Argument, pp. 96-97.)

ARGUMENT.

I.

THIS COURT HAS JURISDICTION TO REVIEW THE JUDGMENT OF THE STATE COURT, AND, IN THE EXERCISE OF THAT JURISDICTION, HAS POWER TO DETERMINE THE QUESTION AS TO THE CONSTRUCTION TO BE GIVEN TO THE PROVISION IN THE CHARTER OF PLAINTIFF IN ERROR EXEMPTING ITS PROPERTY FROM TAXATION.

1. In both cases the claim was made by plaintiff in error, in the State Court, that the subsequent revenue law, and the action of the State officers in levying the tax under it, violated the obligation of its contract of exemption from taxation, and the writs of error, brought to review the judgments of the State Supreme Court deciding the question thus raised adversely to plaintiff in error, present a federal question which this court has jurisdiction to determine.

In both the cases, on the application for judgment for the taxes, it was expressly claimed in the State trial court, by objections in writing, that this provision of the charter, having been accepted and acted upon, constituted a contract, and as such was protected by the Constitution of the United States. (No. 140, Pr. Rec., 16; No. 265, Pr. Rec., 16.)

It was sought by the subsequent law of 1872, and the action of the state authorities in levying the taxes under it, to attack and impair this exemption.

The validity of this law and of the action of the state officers in levying the taxes under it, were denied by the plaintiff in error in their objections filed in the State trial court on the express ground that it was in violation of the provision of the Federal Constitution; that no state shall pass

any law impairing the obligation of a contract. (No. 140, Pr. Rec., 16; No. 265, Pr. Rec., 16.)

In both cases the question thus presented was decided adversely to the plaintiff in error in the State trial court, and this judgment was affirmed by the State Supreme Court, the highest court of the state.

We have thus presented the three elements which, under the repeated decisions of this court, always confer jurisdiction:

(1) It appears that one of the questions mentioned in the Judiciary Act, that of "the validity of a statute or of an authority exercised under a statute of a state on the ground of its being repugnant to the Constitution," was directly raised and presented in the State Court.

(2) This question was decided by the State Court, and the decision was necessary to the judgment rendered in the case.

(3) The decision was against the right or claim asserted by the plaintiff in error under the Constitution of the United States.

In the following cases, in which the jurisdiction of this court was invoked, on the ground that the subsequent law and the action of the state officers in levying a tax under it, impaired the obligation of the contract of exemption, the court sustained the jurisdiction and enforced the obligation of the contract.

University v. *People,* 99 U. S., 309.
Asylum v. *New Orleans,* 105 U. S., 362.
State Bank of Ohio v. *Knoop,* 16 How., 378.
Home of the Friendless v. *Rouse,* 8 Wall., 430.

The Washington University v. *Rouse,* 8 Wall., 439.

Wilmington Railroad v. *Reid,* 13 Wall., 266.

Humphrey v. *Pegues,* 16 Wall., 244.

Pacific Railroad Co. v. *Maguire,* 20 Wall., 36.

2. The determination of the federal question presented, involves the decision of the question as to the proper construction of the exemption provision of the charter of plaintiff in error, and this court will, therefore, determine for itself, in the exercise of its appellate and revisory jurisdiction, the question of construction presented, irrespective of the decision made by the State Supreme Court.

It will be seen from the opinions of the Supreme Court of Illinois in both cases, that that court conceded that the provision for exemption from taxation in the charter of plaintiff in error constituted a contract, the obligation of which would be violated by the subsequent law, if the exemption provision was broad enough to cover the particular property on which the taxes were levied. (No. 140, Pr. Rec., 54; No. 265, Pr. Rec., 30-31.)

In both cases the court based its decision on the sole ground that, under a proper construction of the exemption provision, the property in question was not within the exemption, and that for that reason the subsequent law and the action of the state authorities under it did not violate the obligation of the contract.

The jurisdiction which this court exercises in reviewing the decision of the State Court is appellate and revisory.

The sole question which this court is asked to pass upon in the exercise of its appellate jurisdiction is: Was the contract between the state, on the one hand, and the plaintiff in error on the other, violated by the subsequent state law and the action of the state authorities under it?

The decision of this question involves determining, not only whether the provision of the charter exempting from taxation was in terms a contract, but also any question of construction as to its meaning or effect.

On a writ of error to review the judgment of a State Court, the decision of the State Court holding that, *as a matter of construction,* a particular charter provision did not grant the exemption or other right claimed, is not binding on this court, but the construction to be given to such a charter provision is an original question for this court to determine for itself in the exercise of its appellate and revisory jurisdiction.

University v. *People,* 99 U. S., 309.
Jefferson County Bank v. *Skelly,* 1 Black, 443.
Bridge Proprietors v. *Hoboken,* 1 Wall, 144.
State Bank v. *Knoop,* 16 How., 369.
Delmar v. *Insurance Co.,* 14 Wall, 668.
Houston & Texas Central R. R. Co. v. *Texas,* 177 U. S., 66, 77.
Columbia Water Power Co. v. *Columbia Electric Street Railway Co.,* 172 U. S., 475, 487.

These decisions are placed on two grounds—*first,* that the jurisdiction of this court, to determine on writ of error to the State Court whether in the particular case the obligation of the contract has been impaired, is an *appellate* jurisdiction, in the exercise of which it reviews the decision of the State Court and determines the questions involved for itself as the court of last resort; and, *second,* that if these questions of construction were left to the State Courts to determine, it would always be in their power to defeat the ac-

knowledged Appellate jurisdiction of this court by basing their decision on some ground of construction.

See,

State Bank v. *Knoop*, 16 How., 369, at 391.
Delmar v. *Ins. Company*, 14 Wall, 668.

3. In both the cases before the court the State Supreme Court expressly decided the federal question involved adversely to the plaintiff in error, and such decision was necessary to the judgment rendered.

1. *As to No. 265*, the *sole* question presented or passed on, either in the State trial court or in the State Supreme Court, was the single question, whether the subsequent state revenue law and the action of the state officers under it, in levying the particular tax, impaired the obligation of the contract.

The entire opinion of the State Supreme Court is as follows (No. 265, Pr. Rec., 30-31; *Chicago Theological Seminary* v. *People*, 193 Ill., 619):

"This is an appeal from a judgment ordering the sale of lands of appellant returned as delinquent for the non-payment of taxes for the year 1900. It was claimed by appellant that its said lands were exempt from taxation by the act incorporating it. These lands were not used in connection with appellant's seminary, as a part of the seminary grounds, but were in part vacant and in part improved, yielding rents for its support. In *People ex rel.* v. *Chicago Theological Seminary*, 174 Ill., 177, and in *Chicago Theological Seminary* v. *People ex rel.*, 189 *id.*, 439, *the precise question here involved, and between the same parties, was decided adversely to appellant. In those cases we held that the provision in appellant's charter that 'the property, of whatever kind or description, belonging or appertaining to said seminary, shall be forever free and exempt from all taxation for all purposes whatsoever,' refers only to property used in immediate connection with the seminary, and does not include*

other property which may be owned, held or rented by the corporation as an investment, even though the income derived therefrom is used for the support of appellant's school. Those cases are decisive of this, and the judgment of the County Court will be affirmed."

The record also contains a certificate by the Chief Justice of the State Supreme Court that there was drawn in question in the case in that court the validity of the Revenue Act of 1872, on the ground that it impaired the obligation of the contract in the charter of the plaintiff in error, and that the decision of the court was in favor of the validity of the statute. (No. 265, Pr. Rec., 31-32.)

The record in No. 265 also shows that in that case no claim was at any time made by either party, and no evidence was given or facts stipulated, *as to any prior judgment or judgments either in the County Court or in the two cases previously decided by the State Supreme Court.*

It is true that at the time the case was decided by the State Supreme Court the two previous decisions by that court, as printed in the published reports (*People* v. *Chicago Theological Seminary*, 174 Ill., 177, and *Chicago Theological Seminary* v. *People*, 189 Ill., 439), were referred to in the opinion in the case as controlling on the question, but the *judgments* in those cases were not in evidence or otherwise mentioned in the record and the reported *decisions* were referred to, not as *res adjudicata*, but as previous *decisions of the same court* on the particular question, and as, therefore, binding on it under the doctrine of *stare decisis*.

It also appears from the opinion in *People* v. *Chicago Theological Seminary*, 174 Ill., 177, that the particular case was reversed *and remanded* by the State Supreme Court "*for further proceedings* in accordance with the views here-

in (in the opinion) expressed," and for that reason, not being a *final* judgment, it was not subject to review by writ of error to this court.

Brown v. *Baxter*, 146 U. S., 619.
Rice v. *Sanger*, 144 U. S., 197.
Johnson v. *Keith*, 117 U. S., 199.

As to *Chicago Theological Seminary* v. *People*, 189 Ill., 439 (No. 140), it also appears from the record that, both at the time of the judgment in the County Court and of the decision by the State Supreme Court in No. 265, a writ of error had been sued out from this court to review the judgment, and the case was pending in this court.

2. *As to No. 140*, the record shows that in the State Trial Court, *in addition to the objection* that the levy of the tax was in violation of the obligation of the charter provision, the plaintiff in error *also set up*, by its objections, different prior judgments *rendered by the State County Court in favor of plaintiff in error* on application for judgments against the same property for taxes in different previous years, which *sustained* the objection that the levy of the tax was in violation of the obligation of the charter of plaintiff in error, and from which no appeals or writs of error were taken, and claimed that these prior judgments *of the State County Court* were *res adjudicata* of the question as to the proper construction of the charter provision. (No. 140, Pr. Rec., 17-19.)

In support of this *further objection*, based on the prior judgments of the State County Court, the facts, as to the entry of the former judgments by that court, and that no appeal or writ of error had been taken to review these judgments, were shown. (No. 140, Pr. Rec., 17-19.)

It was also stipulated in No. 140 (Pr. Rec., 43):

"That appeal was taken by the said applicant to the Supreme Court of the State of Illinois, and that the Supreme Court of Illinois June 18, 1898, *filed the opinion of the court, as set forth in 174 Ill., at page 177*, but that *no mandate has been issued* by the Supreme Court of Illinois remanding such cause to the County Court of Cook County, Illinois, and *that no transcript of the order of the Supreme Court of Illinois, remanding the cause to the County Court of Cook County, has ever been filed in the County Court of Cook County.*"

It thus appeared from the facts stipulated in No. 140 that the opinion in the case (174 Ill., 177), was filed June 18, 1898, and that at the date of the trial in the County Court, in No. 140, October 24, 1900, which was *more than two years after the opinion was filed*, no mandate remanding the case (174 Ill., 177), had been issued by the Supreme Court of Illinois, and no transcript of the order remanding the case had ever been filed in the County Court.

Section 83 of the Illinois Practice Act (Ch. 110, Starr & C. Ann. Stats. Ill., p. 3111) provided:

"When any cause or proceeding, either at law or in chancery, is *remanded* by the Supreme Court or Appellate Court, as the case may be, *for a new trial or hearing by the court in which such cause was originally tried*, the Supreme Court or Appellate Court, as the case may be, shall issue its mandate, reversing and remanding such cause directly to such trial court, and, *upon a transcript of the order* of the Supreme Court or Appellate Court, as the case may be, remanding the same, *being filed in the court* in which such cause was originally tried, *and* not less than ten days' *notice thereof* being given to the adverse party, or his attorney, *the cause or proceeding shall be reinstated therein.*"

Section 84 of the same act provided:

"Sec. 84. If neither party shall file such transcript *within two years* from the time of making the final order of the Supreme Court or Appellant (Appellate) Court, as the case

may be, reversing any judgment or proceeding, *the cause shall be considered as* ABANDONED, *and no* FURTHER ACTION SHALL BE HAD THEREIN."

Under this provision, as has been expressly held by the Supreme Court of Illinois, if the cause is not redocketed in the trial court within two years, it is so completely and finally *at an end* that the plaintiff must bring a *new suit* to enforce the cause of action.

Koon v. *Nichols*, 85 Ill., 155.

It appears from the opinion of the State Supreme Court, in No. 140, that in that court *both* of the objections of plaintiff in error to the judgment which had been raised in the County Court were presented and passed on by the court.

As to the *first* objection, the court said (No. 140, Pr. Rec., 54):

"*First.* The *first objection* made by appellant to the entry of judgment by the County Court against its lands, is *that its charter exempts from taxation all of its real estate.* We have already passed upon *this question* in *People* v. *Theological Seminary*, 174 Ill., 177. In the latter case, we held that Section 5 of the Act of 1855, incorporating the appellant, which provides 'that the property, of whatever kind or description, belonging or appertaining to said seminary, shall be forever free and exempt from all taxation for all purposes whatsoever,' refers only to property used in immediate connection with the seminary, and does not include other property which may be owned, rented or held by the said seminary as an investment, even though the income thereof is used solely for school purposes. *We are satisfied with the conclusions reached in People* v. *Theological Seminary, supra, and decline to further discuss the question there passed upon and settled. The objection, made by the appellant, based upon the ground of an alleged impairment of the obligation of its contract with the State of Illinois, is involved in this first objection and disposed of by the decision in relation thereto. It need not be separately considered. This*

court has merely construed appellant's charter, and given full force and effect to it as so construed."

As to the *second* objection, the court stated the objection as follows (No. 140, Pr. Rec., 54):

"*Second.* It appears that in each year for a number of years prior to 1897, appellant objected to the entry of judgment for general taxes in the County Court against certain of its lands upon the alleged ground that said lands were exempt from taxation. * * * *The contention now made in the present case is that the judgments so rendered by the County Court in these former years in its favor sustaining the objections so made by it, are in the nature of estoppels, and constitute a res adjudicata against the prosecution of the present proceeding."*

As to this objection, the decision of the court was that it could not be sustained on different grounds:

(1) That it did not appear from the records of the judgments rendered in the former years that the particular question was presented.

(2) That the judgment which it appeared was rendered in *People* v. *Chicago Theological Seminary*, 174 Ill., 177, was, as to the former judgments in favor of plaintiff in error, "an estoppel against an estoppel," and therefore had the effect to open up the whole matter and set it at large, and that the common law rule was that "one estoppel neutralizes the other and the question is left to be tried over." (No. 140; Pr. Rec., 57.)

(3) That the court was "*inclined* to hold that, under the circumstances above detailed, the last judgment (the judgment in 174 Ill.), is the controlling one."

As to this ground, the court stated its conclusion thus (No. 140, Pr. Rec., 62):

"Our *conclusion* upon this branch of the case is, that the judgment of reversal rendered by this court, as shown in

the case of *People* v. *Theological Seminary, supra* (174 Ill.), operated as a bar and complete defense *against the previous judgments rendered by the County Court and relied upon by the appellant herein.*"

It will be seen from the foregoing:

(1) That the State Supreme Court expressly passed on the question whether the subsequent law impaired the obligation of the contract, and held, following its previous decision in *People ex rel.* v. *Chicago Theological Seminary* (174 Ill., 177), that it did not, for the reason that the charter provision as construed by it did not cover the property on which the particular taxes were levied.

(2) That the question as to the effect of the former decision in *People* v. *Theological Seminary* (174 Ill., 177), other than as a previous decision on the question of construction, only arose in the case, and was only considered by the court *in answer to the objection made by plaintiff in error that the former judgments in the County Court were conclusive of the question.*

(3) The only *facts* as to the case in 174 Ill., shown in the record in No. 140, were that the court in that case "filed the opinion," "as set forth *in 174 Ill.*, at p. 177," and *the date* it was filed, and that at the time of the trial, which was more than two years after the filing of the opinion, the case had not been redocketed in the trial court and had therefore been *abandoned.* The *judgment,* if any, entered by the State Supreme Court in pursuance of its *opinion, was not given in evidence or otherwise referred to in the record,* as would have been necessary even to present the claim that the former *judgment* in the case was *res adjudicata* as to the question.

(4) It appeared in the case that the entire proceeding, in which the decision in *Chicago Theological Semi-*

nary v. *People* (174 Ill.), was rendered, *had been abandoned by the state by its failure to redocket the case in the trial court within the time prescribed by statute, and was as effectually out of court as if it had been, in fact, redocketed and dismissed for want of prosecution.*

(5) As a necessary consequence of all this there was no *judgment* which was *res adjudicata* at the time of the trial in No. 140, but the utmost effect which could be given to the decision in *People ex rel.* v. *Chicago Theological Seminary* (174 Ill.), was as a prior *decision by the same court* of the particular question under the doctrine of *stare decisis*, which, whatever effect might be given to it by the State Supreme Court, would not be in any way binding on this court in the exercise of its appellate and revisory jurisdiction as the court of last resort.

The record in No. 140 also contains the following certificate by the Chief Justice of the State Supreme Court (No. 140, Pr. Rec., 67):

"I do hereby certify that in the above entitled cause there was drawn in question in said Supreme Court of the State of Illinois, the validity of a statute of the State of Illinois, being the general revenue act of the State of Illinois, approved March 30, 1872, and in force July 1, 1872, entitled: 'An act for the assessment of property and for the levy and collection of taxes,' with its amendments, on the ground that said general revenue act of the State of Illinois impaired the obligation of the contract arising from the charter granted to said The Board of Directors of the Chicago Theological Seminary, the appellant, by the State of Illinois, and was repugnant to the Constitution of the United States, and that the decision of said Supreme Court of Illinois was in favor of the validity of said statute."

II.

THE PROVISION IN THE CHARTER OF PLAINTIFF IN ERROR EXEMPTED FROM TAXATION THE PROPERTY IN QUESTION, AND, FOR THAT REASON, THE LAW UNDER WHICH THE TAXES WERE LEVIED, IMPAIRED THE OBLIGATION OF THE CONTRACT AND THE JUDGMENT SHOULD, THEREFORE, BE REVERSED.

The Act was entitled: "An Act *to incorporate* the Chicago Theological Seminary."

Section 1 provided that the persons named and their successors be created a body corporate, to be styled: "*The Board of Directors of* the Chicago Theological Seminary," with power to sue, "to acquire, hold and convey property, real and personal," "to make and alter a constitution and by-laws for the conducting and *government* of *said institution* and *fully to do whatever may be necessary to carry out the object of this act of incorporation.*"

Section 2 provided:

"That the *seminary* shall be located in or near the City of Chicago. *The object* shall be to furnish instruction and the means of education to young men preparing for the gospel ministry, and the institution shall be equally open to all denominations of Christians for this purpose."

Section 3 provided as to the number of the directors and the manner of their election.

Section 4 provided that "the Board of Directors shall have power to appoint an executive committee," etc., and "such *officers,* professors and teachers as the *government* and instruction of *the seminary* may require, and prescribe their duties, to remove any of them for sufficient reasons," and to confer degrees.

Section 5, the exemption provision, was as follows:

"Sec. 5. That the property, *of whatever kind or description, belonging or appertaining to said seminary*, shall be forever free and exempt from all taxation for all purposes whatsoever."

Section 6 (the last section) was as follows:

"Sec. 6. This act to take effect and be in force from and after its passage, and it shall be deemed a *public* act, and *shall be construed liberally in all courts* for the purposes therein expressed."

For the charter in full, see Statement, *supra*, and No. 140, Pr. Rec., 26.

It will be observed at the outset that the language of the exemption—"*the* property *of whatever kind or description* belonging *or* appertaining to said seminary"—is the broad general language appropriate to express a *total* exemption, and wholly inappropriate to express the narrow and limited *partial* exemption, which the Supreme Court of Illinois has decided it was intended to express.

It is a significant fact in this connection that, in each of the ten different years in which taxes were levied on the property in question, prior to the taxes involved in the case in 174 Ill., the County Court held that a *total* exemption was intended, and, therefore, rendered judgments for plaintiff in error, *and that during all this period, the State did not even raise a question as to the correctness of this construction by an appeal to the Supreme Court from any one of the judgments.*

The ruling of the Supreme Court of Illinois is that the legislature intended by this language only to exempt—to use its own words—"the property *used in immediate connection with* the seminary" (the school buildings). (No. 140, Pr. Rec., 54; No. 265, Pr. Rec., 31.)

Accordingly, the State, acting on this construction, has not taxed (to use the language of the State Supreme Court) "the lots *occupied by buildings wherein is given instruction*," but has taxed all the other property of the plaintiff in error, although it is expressly stipulated that the property thus taxed was acquired, and is held, solely "for the promotion of the objects mentioned in its charter," and that the income of the property is used *solely* for the purpose contemplated in its charter. (No. 140, Pr. Rec., 26; No. 265, Pr. Rec., 20.)

In neither of the opinions in the two cases before this court is the question of the construction of the exemption provision considered. In both cases the court refers to and follows the decision in *People ex rel.* v. *Chicago Theological Seminary*, 174 Ill., 177, and adopts the conclusion there reached as giving the proper construction to the exemption provision. (No. 140, Pr. Rec., 54; No. 265, Pr. Rec., 31.)

The conclusion of the state court in both cases, therefore, rests on the grounds and reasoning set forth in the opinion in *People ex rel.* v. *Chicago Theological Seminary*, 174 Ill., 177, which are, in effect, re-adopted in the opinions in the two cases.

An examination of the opinion (174 Ill., at pp. 181–182) will show that the conclusion of the State Supreme Court was based on the following grounds, all of which are essential to the conclusion:

(1) That the rules of strict construction as to exemptions from taxation, which are stated at length, should be applied in giving construction to the provision.

(2) That the provision of section 6, that the act shall be *construed liberally in all courts*," applies only *after* the *purpose*, *i. e.*, the *intention* of *each* provision has been

ascertained by applying the *ordinary* rules of construction, including the rule of *strict* construction; and that when the purpose, *i. e.*, the *intention* of the provision, has been thus ascertained, "liberal rules of construction, *if necessary*, are to be resorted to *to give effect to* such purpose."

(3) That under the rules of strict construction which, it is held, should be applied, if the language of the provision "is *capable of* a broad *or* more restricted meaning, the latter *must* be adopted."

(4) That, accordingly, as the words "the seminary," in the second section of the act refer (as the court assumes), to "certain *property*," "particular *property*," "mentioned" in the section, viz., the school buildings and grounds, the words "said seminary," in section 5 (the exemption provision), should be held to mean this "particular property"—the school buildings and grounds, and not the incorporated institution referred to in the title of the act and in sections 1 and 4, as "The Chicago Theological Seminary" and "the seminary."

It will be seen that the ruling of the State Court, thus narrowing the exemption expressed in the broad general language of the provision to the specific exemption only of "the property *used in immediate connection with* the seminary," is based wholly on the words "said seminary" in section 5, and the view that these words refer to "particular *property*," (the school buildings and grounds), and not to the incorporated institution.

The question, therefore, is: To what did the words "said seminary" in the exemption provision refer; to the *institution* incorporated by the act, or to the *place* where instruction was to be given—the school buildings and grounds?

1. The words, "said seminary," in the exemption provision, referred to the corporation created by the act, and designated in the title as the Chicago Theological Seminary, and not to the school buildings and grounds, as held by the State Supreme Court, and this being so, the exemption provision indisputably exempted from taxation the property against which the judgments were rendered.

The first mention of "the seminary" in the act is in the title.

It is well settled that the title of an act may properly be referred to to ascertain the legislative intention.

Holy Trinity Church v. *United States*, 143 U. S., 457, 462.

Smythe v. *Fiske*, 23 Wall., 374, 380.

Heirs of Emerson v. *Hall*, 13 Pet., 409, at 413.

Bell v. *Mayor*, 105 N. Y., 144.

President, etc., of St. Vincent's College v. *Schaefer*, 104 Mo., 261.

The act is entitled, "An Act *to incorporate* the Chicago Theological Seminary." (No. 140, Pr. Rec., 26: No. 265, Pr. Rec., 21.)

Here was an express declaration in the title of the act that its object was "to incorporate" the institution referred to and described in the title as "The Chicago Theological Seminary."

There can be no room for question that this first mention of the "Chicago Theological *Seminary*" referred to the institution incorporated by the act, and not "to the *property*," the school buildings, etc.

In *Heirs of Emerson* v. *Hall*, 13 Pet., 409, an act of Congress was entitled "An act for the relief of Beverly Chew, the *heirs* of William Emerson, deceased, and the *heirs* of Edward Lorrain, deceased." In the body of the act it was

provided that the money directed to be paid should be paid "to the said Beverly Chew and the *legal representatives* of the said William Emerson and Edward Lorrain."

This court, in holding that the intention was that the payments should be made to the *heirs* and not the *legal representatives*, say:

"It (the government) has, under *the title* of an act 'for the relief of the *heirs* of Emerson,' directed, in the body of the act, the money to be paid to his *legal representatives*. That the *heirs* were intended by this designation is clear."

In *Bell* v. *Mayor, etc., of N. Y.*, 105 N. Y., 139, the court, (PECKHAM, J.), in giving construction to an act, say (p. 144):

"The *title* of an act may be regarded * * * for the purpose of arriving at the real meaning of the legislature. * * * By *the title the purpose of this act is evident* and would include just such a case as is now before us."

See, also, in this connection, *President, etc., of St. Vincent College* v. *Shaefer*, 104 Mo., 261, cited at length, *infra*.

Again section 4 (the section immediately preceding the one in question) provides "that the board of directors shall have power to appoint * * * such *officers*, professors and teachers, as the *government* and instruction of *the seminary* may require, and prescribe their duties, and remove any of them for sufficient reason."

Here again, it is clear that the word "seminary" does not refer to the "particular *property*"—the school buildings and grounds—but to the institution which was incorporated by the act.

It was this institution and not the "*property*"—the school buildings, etc.—which was to have "officers," for its "government" and "professors and teachers" to give "instruction," whom the board of directors of the

incorporated institution were authorized by this section to appoint and remove, and whose duties they were to prescribe.

It is true that, as was customary in the early charters of incorporation, it was provided in section 1 that the corporate name should be "*The Board of Directors of* the Chicago Theological Seminary," and that in the exemption provision this full corporate name is not used, and it is apparently on this that the state court bases its conclusion that, "To say that 'said seminary' was intended to mean the corporation is *to extend the meaning by* implication."

Similar corporate names are found in all the earlier charters; those creating railroad corporations, incorporated banks, etc., as well as charitable institutions, such as "The President and Board of Directors of," etc. But it was not therefore necessary or customary to always use the cumbersome full name when the corporation was referred to.

This long and unwieldly name of the corporation, "*The Board of Directors of* the Chicago Theological Seminary," is only used once in the charter. It does not even appear in the title of the act, but the corporation is there called "The Chicago Theological Seminary." After the mention of the full corporate name in the first section, the corporation is referred to in the charter as "*said* institution," or "*said* seminary."

In the first section, after the name, it is referred to as "*said* institution," although nothing was said before as to any institution, and the only reference that the words "said institution" can have must be to the corporation created by the act.

While this cumbersome title, "*The Board of Directors of*

the Chicago Theological Seminary,'' was made the formal name of the corporation, this did not exclude the use, in referring to the incorporated institution, of such other appropriate general description as would properly designate it.

On the contrary, instead of using the full corporate name, "*The Board of Directors of* the Chicago Theological Seminary,'' it was natural and appropriate to use the words "*said* seminary'' to designate the incorporated institution referred to in the title of the act as "The Chicago Theological Seminary,'' and again in section 4 as "the seminary.''

This use of the shorter designation instead of the full, formal name, "*The Board of Directors* of the Chicago Theological Seminary,'' is illustrated in the very title of the act, in which the phrase "The Chicago Theological Seminary'', is used to designate the institution incorporated by the act.

So, in the proceedings in the County Court, in the return of delinquent property on which the judgments for taxes were based, all the different pieces of property were described in the column showing "Owner's Name,'' as belonging to "The Chicago Theological Seminary,'' instead of using the full corporate name. (No. 140, Pr. Rec., 12.)

So, in the opinion of the Supreme Court of Illinois, in No. 140 (Rec., 54), the court, after quoting the exemption provision, states as its conclusion that the provision "refers only to property used in immediate connection with *the seminary*, and does not include other property which *may be owned, rented or held by* SAID SEMINARY as an investment, even though the income thereof is used solely for school purposes.''

Here the words "said seminary"—the precise words of

the exemption provision—were indisputably used by the state court itself to designate the incorporated institution, and that too although it used in a previous part of the same sentence the words "the seminary" in a more restricted sense.

In fact, that the general words "the Chicago Theological Seminary" were appropriate to designate the incorporated institution is recognized in the very name itself, "The Board of Directors *of* the Chicago Theological Seminary."

The seminary buildings had no board of directors. The Board of Directors referred to in this corporate *name* as "The Board of Directors *of* the Chicago Theological Seminary," were the directors of the incorporated institution created by the act and referred to in its title.

There was therefore in the very name itself "The Board of Directors *of* the Chicago Theological Seminary" the same recognition of the general words "The Chicago Theological Seminary" as an appropriate designation of the incorporated institution, as in the title of the act, "An Act *to incorporate* the Chicago Theological Seminary."

It was to this "Chicago Theological Seminary" incorporated by the act, and referred to both in the title and in the corporate name as "The Chicago Theological Seminary", and again in section 4 as "the seminary", that the words "*said* seminary" in Section 5 referred.

As forcibly confirming this construction we have the fact that in a number of different charters, passed at different sessions of the same legislature, there was the same formal name, "The Board of Directors of —— Seminary," and an exemption provision in the *identical language* of the one in question, in which the same words, "said seminary," were used, and as to which there was no possible room for the

argument of the State Supreme Court that they referred to "particular property"—the school buildings, etc., and they therefore indisputably and necessarily referred to the corporation. (See *infra* and Appendix, pp. 5–13.)

In Angel and Ames on Corporations, Sec. 99, the author says:

"The *name* of a corporation frequently consists of several words, and *an omission or alteration of some of them is not material.*"

In *Marine Bank of Baltimore* v. *Bias*, 4 Har. & J. (Md.), 338, suit was brought against a corporation by its corporate name, "*The President and Directors of* the Marine Bank *of Baltimore.*" In the declaration the corporation was described as "said Marine Bank," and it was contended that judgment could not be entered on the declaration, on the ground that there was no such corporation as the "Marine Bank." But the court overruled the objection and entered judgment.

In *President and Faculty of St. Vincent's College* v. *Schaefer*, 104 Mo., 261, by an act passed in 1843, the legislature constituted certain persons named a body corporate by the name of "*The President and Faculty of* St. Vincent's College." The institution was to be "established" in the City of Cape Girardeau.

An act passed in 1853, entitled "An Act to exempt certain property from taxation," provided that:

"All the real estate and appurtenances now *belonging to* the St. Vincent *College* and St. Vincent Female *Academy, in the County of Cape Girardeau* * * * be and the same is hereby exempt from the payment of taxes for state or county purposes."

It will be seen that there was in the act incorporating the college the same cumbersome corporate title, "*The President and Faculty of* St. Vincent's College," and, in the

exemption provision, the same use of the general designation, "St. Vincent's *College*," instead of the full corporate name, and the same words, "*belonging* to." There was, therefore, the same basis for giving to the provision the construction given by the state court to the provision in question, that the words "*belonging* to" and "*college*" were "capable of" the "more restricted meaning," etc., "connected with," the "particular property," etc., *i. e.*, the college buildings, etc.

The court, in holding that the exemption was a total exemption of all the property of the corporation, say (pp. 267, 268):

"The language of the act of 1853 is *clear and free from ambiguity*. It exempts the real and personal property then *belonging* to St. Vincent's *College* 'from the payment of taxes for state or county purposes, so long as the same or the proceeds thereof shall be used for or applied to educational purposes.' * * *

It is insisted that the act of 1853 does not confer the immunity from taxation upon the *plaintiff*, because *the plaintiff is not named therein*. The original act of 1843 is entitled, 'An Act incorporating St. Vincent's College,' while in the body of the act the institution is incorporated by the name of '*The President and Faculty of* St. Vincent's College'; and the exempting act speaks of all real estate, etc., *belonging to* the 'St. Vincent College.' *The objection is too technical to deserve much consideration; for there can be no doubt but the last act refers to the corporation created by the first one. The* TITLE *of the first act is* QUITE CONCLUSIVE. *The variance is immaterial, for the two names are substantially the same.*"

In *Nobles* v. *Hamline University*, 46 Minn., 316 (cited at length *infra*) there was the same corporate name, "*Trustees of* the Hamline University of Minnesota," and it was expressly held that like general words in the exemption provision, "*the* property *belonging* to *the institution*," referred to the corporation and therefore created a total exemption.

We have thus shown that the word "seminary" was clearly used in the act as referring to the corporate institution: (1) in the title; (2) in the corporate name; and (3) in section 4.

Our contention is that it was to this incorporated institution, mentioned in these different preceding provisions as "The Chicago Theological Seminary" and "the seminary," that the words "*said* seminary" in section 5 clearly referred.

There is only one other mention of "the seminary" in the act.

Section 2 provides (No. 140, Pr. Rec., 27):

"Section 2; That *the seminary* shall be located in or near the City of Chicago. The *object* shall be to furnish instruction and the means of education to young men preparing for the gospel ministry," etc.

The Supreme Court of Illinois bases its entire conclusion on the words "the seminary" in this preceding provision, and, assuming that the words "the seminary," as used in section 2, refer to "certain *property*," "particular *property*"—the school buildings—concludes that therefore the words "said seminary" in section 5 were used in the same sense, and for that reason referred to the school buildings, etc., and not to the incorporated institution.

The court (174 Ill. at p. 182), said:

"The second section of the charter mentioning certain *property* to be located in or near the City of Chicago, and which is denominated 'the seminary,' we think the words in the fifth section, 'said seminary,' refer *to that particular property*."

It will be seen that the court here bases its conclusion wholly on these grounds:

First. That (as the court assumes) the word "seminary"

in section 2 is used in the sense of "*certain property,*" the school buildings, etc.

Second. That the word "seminary," being used in this sense in section 2 (as is assumed), it was therefore used in the *same* sense in section 5.

As to these grounds on which the entire ruling is based:

(1) The court *assumes* without giving any reasons that the word "seminary" in section 2 refers to "certain *property*"—the school buildings and grounds.

We have already seen that the word "seminary" was in fact three times used in other provisions of the Act to designate the incorporated institution, and the rule is that the same word being used in section 2 it will be presumed that it was there used in the *same* sense, unless a contrary intention is shown.

In determining the sense in which the word "seminary" was used in the sentence, "That the seminary shall be located in or near the City of Chicago," the immediately following sentence is most significant. It reads: "The *object* shall be to furnish instruction and the means of education," etc. Here is a clear reference to the "seminary" referred to in the immediately preceding sentence. It was as if the provision had read "the object *of said seminary,*" etc.

It is equally clear that "the particular *property*"—the school buildings and grounds—was not referred to. 'The *object*" referred to—"to *furnish* instruction and the means of education," etc., was the object of the *incorporated institution* and not of the mere buildings, etc.

This was recognized in the opinion in 174 Ill., where the court say (p. 179):

"The second section provides that *the seminary* shall be located in or near the City of Chicago; that *its* object shall be to furnish instruction and the means of education to young men preparing for the gospel ministry."

It is submitted that "the seminary" here referred to as having for "its object" to "furnish instruction and the means of education," etc., was not "certain *property*,"—the school buildings—but the institution which was incorporated by the Act.

The assumption of the opinion that "the seminary" mentioned in section 2 was "particular property" is apparently based on the fact that the word "located" is used in connection with it, and that therefore the *property*—the school buildings—and not the institution incorporated by the Act was referred to.

The court seems to assume that because of the use of this word "located" in the sentence, "that the seminary shall be *located* in or near the City of Chicago," "the seminary" necessarily meant the school buildings as distinguished from the institution which was incorporated by the Act.

As we have seen, in both the title of the Act and in section 4 "the seminary" was clearly used as referring to the institution incorporated by the Act. And it was therefore presumably used in the same sense in section 2, unless the use of the word "located" excludes and necessarily gives it the meaning "school buildings."

So far from the word "located" necessarily referring to the school buildings, it was a proper and customary use of the word to use it as referring to an incorporated institution such as was created by the Act.

The precise word "located" is frequently used in char-

ters and other statutes as applied to corporations. At common law it was an attribute of every corporation that it had a *locality*. Its *locality* was the place where it carried on its operations—where it did business.

In Angel and Ames on Corporations, Sec. 103, the author says:

"A Corporation, it is said, should be constituted as *of some place.*"

In *Sangamon & Morgan R. R. Co.* v. *County of Morgan*, 14 Ill., 163, a railroad passed through both Sangamon and Morgan Counties, and the court, in holding that the corporation was *located* in Sangamon County, in which it had its principal office, and that therefore its personal property should be taxed in that county and not in Morgan County, say (pp. 165, 166):

"The *location* or *residence* of the corporation must be considered to be in the state by whose laws it was created, and that residence must be *where its principal office or place of business is.* * * * In Morgan County the Corporation has no such *location;* the principal office of the company is in Sangamon County, where its principal and managing agent resides and where the personal property is kept when not in active service. In Morgan County it has no *locality.*"

In *Bristol* v. *Chicago & Aurora R. R. Co.*, 15 Ill., 436, the *principal office* of the company was in Cook County. The court, in holding that the company "*resided*" in Cook County, said (p. 437):

"It (the corporation) *dwells* in the place *where its business is done.* It is *located* where its franchises are exercised. * * * Having *located* itself there, it cannot now question the jurisdiction of the courts of Cook County."

Section 57 of the National Banking Act provides:

"Suits, actions and proceedings against any association

(national bank) may be had * * * in any state, county or municipal court in the county or city in which said *association* is *located*, having jurisdiction in similar cases."

In *Charlotte National Bank* v. *Morgan*, 132 U. S., 141, this court, in passing on this provision, refers to "the county or city in which such *associations* were *located*" (p. 145), "the county or city in which it (the Association) is *located*" (p. 145).

The language and reasoning of these authorities is peculiarly appropriate to an educational institution like the plaintiff in error, which necessarily had a location, and the location of whose educational operations and of its business, which would be only an incident to its main purpose, would naturally and properly be the same.

It was therefore entirely appropriate to use the word "located" as applied to the institution to which the Act gave a corporate existence, and we submit that was to this incorporated institution, which was already referred to in the title and in the subsequent section 4 as "The Chicago Theological Seminary" and "the seminary," to which section 2 referred as "the seminary."

That the word "located," as used in different special charters of this character, does not necessarily mean property, but is in fact used as referring to the incorporated institution, is further conclusively shown by reference to other similar charters passed by the same legislature in different years, in which the precise phrase was used in such a connection that it could only refer to the incorporated institution. (See *infra* and Appendix, pp. 13-15.)

(2) But even if it is assumed that the words "the seminary" in the particular section 2 referred to "certain property," the school buildings, etc., it does not follow, as the

court assumes, that the words "said seminary" in the subsequent section 5, which related to a wholly different subject, also referred to this "property," and not to the incorporated institution.

Whatever meaning is given to the words "the seminary" in section 2, the question is in what sense was "said seminary" used in section 5?

The question is, reading the language of section 5 in connection with the other provisions of the Act, and its general purpose, and having reference to the natural and ordinary meaning of the words used, what was the legislative intention?

Did the words "said seminary," as there used, refer to the incorporated institution designated in the previous provisions as, "The Chicago Theological Seminary" and "the seminary," or to the school buildings?

As showing that the incorporated institution was referred to, we have, in the first place, the fact, that, giving to the word "belonging" in section 5 its primary and ordinary meaning of *ownership*, the words "said seminary" in the same section could only refer to the corporation.

It is a familiar rule that words and phrases used in a statute should be given their primary and ordinary meaning, unless it appears from other provisions of the act that it was the legislative intention that they should have a different meaning.

In *Gammon* v. *Gammon*, 153 Ill., 41, the court, referring to the word "belong," say (p. 47):

"The primary meaning of the word 'belong' as given by lexicographers is *'to be the property of.'* Such also is the *common* and *ordinary* meaning of the word."

If the meaning is given to the word "belong" in the pro-

vision in question, which we have seen the Supreme Court of Illinois has expressly held is "the primary" and "common and ordinary meaning" of the word, it follows as a necessary consequence that the words "said seminary" must be construed as referring to the only entity mentioned in the charter which had the capacity to own property—the institution incorporated by it.

This the State Court in fact recognizes in its opinion, and that it was therefore necessary to its conclusion to give to the word "belong" a different meaning from that which in the decision quoted from 153 Ill. it held was its "primary" and "common and ordinary" meaning.

The court say (174 Ill., p. 182):

"It is undoubtedly true that the word 'belonging' *may* mean ownership and very often does, but that is not its only meaning. Webster's International Dictionary defines it *'That which is connected with* the *principal* or *greater* thing; an *appendage;* an *appurtenance.'*"

The court, having thus found that "ownership" is not the *only meaning* which the word "belong" has, assumes that because it *may have* the other meaning given in the definition quoted from Webster, it was *therefore the intention of the Legislature* that it should have that meaning.

In the first place it is not the rule, as is here assumed, that because a word *may* have a different meaning from its primary and ordinary meaning it should therefore be given that meaning.

On the contrary, the rule is that the word should be given its primary and ordinary meaning unless other provisions of the act show an intention to the contrary.

Again, as we shall show more fully hereafter, if the word "belonging" is given the meaning given it by the definition quoted, it would give an unreasonable and absurd meaning

to the provision, and one clearly not intended,—a meaning which would exempt only the property "connected with the *principal thing*"—the school buildings—as "an appurtenance," leaving the "*principal thing*," the school buildings and grounds, not exempt.

That the word "belonging" was used in the sense of ownership is shown not only by the fact that this is the primary and ordinary meaning of the word, and the only meaning which would avoid the absurdity pointed out, but also by reference to the provisions of many other similar charters passed by the Legislature of Illinois at the same and other sessions, in which there were exemptions in the identical language, and the context shows that the word "belonging" could only be construed as being used in the sense of ownership.

So in many of these charters, in which the same words "belonging or appertaining to said seminary" were used in exemption provisions identical in language with the one in question, there was no preceding provision which left room even for the argument made by the Supreme Court that *ownership* was not intended, and that the word was used in the narrow sense given it by that court. (See *infra*, and Appendix, pp. 5-13.)

That the words "said seminary," in Section 5, should be held to refer to the incorporated institution, even if "the seminary" is given the meaning of the school buildings, is further shown by the additional points stated *infra* as sustaining our construction.

2. Our construction of the exemption provision is forcibly confirmed by the adjudicated cases, in which like provisions were construed, and it was held, on grounds peculiarly pertinent to the case before the court, that similar general words,

"belonging to" and "the college," "the institution," "the asylum," etc., referred to the corporation created by the act, and that all the property of the corporation was, therefore, exempt.

In *County of Nobles* v. *Hamline University*, 46 Minn., 316, the act incorporating Hamline University, passed March 3 1854 (Laws of Minn., 1854, p. 105), was entitled: "An Act *to incorporate* the Hamline University of Minnesota." The act provided that the persons named should be a body corporate, to be styled the "*Trustees of* the Hamline University of Minnesota," * * * for the purpose of establishing, maintaining and conducting *an institution of learning* for the education of youth of both sexes.

Section 10 provided:

"This *institution* shall be under the patronage of the Wisconsin Annual Conference of the Methodist Episcopal Church, or of such conference as may be formed out of the Wisconsin Conference, in the bounds of which *the said institution* may be *located.*"

Section 11 provided:

"All corporate property *belonging to the institution*, both real and personal is and shall be free from taxation."

Section 13 of the act, which was identical with Section 6 of the act in question, provided:

"This act shall be *construed liberally in all courts* for the purposes herein expressed."

It will be seen that, in this act, there was the same corporate name as in the act in question,—"*The Trustees of* Hamline University of Minnesota." There was the same use in the exemption provision of a general term, "the institution," instead of the corporate name, and of the same words "belonging to." There was also the same use of the word "locate," as applied "to the *said institution*." It was contended in that case as in this that the words "the institution", in the exemption provision, referred to the place

and not to the corporation, and that therefore the exemption was limited to property directly used and occupied by the university.

The Supreme Court of Minnesota in holding that all the property of the corporation was exempt from taxation under this provision, say (pp. 317, 318):

"The appellant claims * * * (3) that the terms of the charter above cited exempt from taxation only 'the University itself, and the necessary grounds for its proper use.' * * * The third proposition is based upon *an untenable attempted distinction between the 'institution' and the 'corporation.'* The 'institution' established by the act was a body corporate to be known by the name of 'Hamline University of Minnesota.' It is perectly apparent that all through the act the words 'university' and 'institution' *are used as synonymous, and that both words are used as meaning the corporate body.* The term 'institution,' although *sometimes used as descriptive* of the establishment or place where a business is carried on, *properly means an association or society organized or established for promoting some specific purpose.* Webster Dict.; *Morris* v. *Lone Star Chapter*, 68 Tex., 698 (5 S. W. Rep., 519); *Gerke* v. *Purcell*, 25 Ohio St., 229, 244; *Humphreys* v. *Little Sisters of the Poor*, 29 Ohio St., 201. It is evidently in this sense that the word is used in this act. The expression 'all corporate property *belonging to* the institution' clearly shows, when taken in connection with the whole act, that the legislature did not intend to distinguish between property of the 'institution' and the 'corporation.' *The institution, as distinguished from the corporation, has no being, and is incapable of owning property. Had it been intended to limit the exemption to property directly used and occupied by the University, different language would have been used.*"

Asylum v. *New Orleans*, 105 U. S., 362, was a writ of error brought to review a judgment of the Supreme Court of Louisiana, which sustained the validity of a tax imposed by the authorities of the City of New Orleans on certain property of the plaintiff in error, the St. Anna's Asylum.

St. Anna's Asylum was a charitable institution which was incorporated by an act of the legislature of Louisiana, approved April 9, 1853, for the purposes indicated by its name.

The sixth section of the act provided as follows:

"Sec. 6. Be it further enacted, etc., that the said corporation shall enjoy the *same exemption* from taxation as was enacted in favor of the 'Orphan Boys' Asylum of New Orleans' by the act approved March 12, 1836, entitled 'An Act for the relief of the Orphan Boys' Asylum of New Orleans.'"

The act relating to the "Orphan Boys' Asylum of New Orleans," referred to in this section, provided as follows:

"That from and after the passage of this act all the property, real and personal, *belonging to* the Orphan Boys' *Asylum* of New Orleans be and the same is hereby exempted from all taxation, either by the state, parish or city in which it is situated, any law to the contrary notwithstanding."

It thus appears that in this case there was the same use of a general word, "asylum," which could refer either to the *place* known as the "asylum," or the incorporated institution, and of the word "belonging" which, in addition to its primary meaning, "ownership," had the different meaning, "connected with," etc., given to it by the Supreme Court of Illinois. There was, therefore, the same basis for giving to the provision the narrow and restricted meaning which the Supreme Court of Illinois gave to the provision in question.

The property on which the tax was levied was a cotton press owned by the corporation, the title to which was derived by devise, and the income from which was applied to maintain the charity. While the precise question of construction does not appear to have been raised, this court had occasion to pass upon the meaning of the provision,

and held that it was clear and free from ambiguity, and exempted all the property of the corporation from taxation, and for that reason reversed the judgment of the state court.

The court (Mr. Justice Bradley) say (pp. 365, 369):

"The language of the exemption is *so explicit and so broad*, and comes in after so many allusions to property which it is supposed the corporation might acquire, other than that which would be directly used for food and shelter to the destitute and helpless persons under its care, that *no doubt can be entertained as to its literal application to all the property of the society which it would be lawful and proper for it to possess.* The funds on which it relies for carrying on its work, however invested, whether in stocks, real estate, or otherwise, no less than the asylum building itself, are clearly embraced in the terms of the exemption; *and to exclude them from its operation would require the insertion or addition of words which the legislature did not see fit to express.* * * *

It is also said that, in order to constitute a contract, the grant ought to be *clear and free from all ambiguity and doubt*, and *not susceptible of* a different construction. We think it is so in this case. *The contract is not a matter of inference or presumption. It is distinctly expressed in the act of incorporation. Indeed, a clearer case could hardly be made.* * * *

We think it difficult to conceive a grant more clearly expressed than that in the present case; and unless we are disposed to reverse the previous decisions of this court, we cannot hesitate what judgment we ought to give."

See, also,

President and Faculty of St. Vincent's College v. *Schaefer*, 104 Mo., 261, cited at length *supra*.

3. If the meaning is given to the words "said seminary," and "belonging to," in the exemption provision, which the State Supreme Court found it necessary to give to them to reach the conclusion it did, the result is that the provision, as a whole, is given an unreasonable, and, in fact, absurd meaning.

In the opinion in 174 Ill., the State Supreme Court states its conclusion as to the meaning of the words, the meaning of which is in dispute,—"said seminary," and "belonging to," —as follows:

"The second section of the charter mentioning *certain property* to be located in or near the City of Chicago and which is denominated 'the seminary,' we think the words in the fifth section 'said seminary' refer to *that particular property*. * * * It is said that the only entity mentioned in the charter capable of *owning* property is the corporation, and, therefore, it could not have been intended that property belonging to or appertaining to the seminary was meant by section 5. We think this position is based upon *a too limited meaning* of the words 'belonging' or 'appertaining' as here used. * * * It is undoubtedly true that the word 'belong' *may* mean *ownership*, and *very often does*, but that is not its *only* meaning. Webster's International Dictionary defines it: '2. That which is *connected with* a *principal* or *greater* thing; an *appendage;* an *appurtenance*'."

It will be seen from this quotation that, under the construction which the state court has given to the exemption provision in its opinion in 174 Ill., (expressly followed and reaffirmed as the sole basis of its decision in both the cases now before this Court) the words "said seminary" are given the meaning "the *particular property*" which (as is assumed) was "mentioned" in the preceding section 2 as "the seminary" (the school buildings and grounds), and the word "belong" is given the meaning (using the language of the definition quoted and adopted in the opinion) "*connected with* a *principal* or *greater* thing; an *appendage*; an *appurtenance.*"

Substituting for the words actually used in section 5—"said seminary" and "belonging to"—the words which the Supreme Court of Illinois thus holds express the meaning

it was intended they should have—section 5 would read as follows:

"That the property of whatever kind or description *connected with*, as an *appendage* or *appurtenance*—or appertaining *to*—said seminary (meaning by 'said seminary' the particular *property* mentioned in the second section as 'the seminary') shall be forever free and exempt from all taxes for all purposes whatsoever."

Thus, reading the provision as the Supreme Court of Illinois say it was intended to be read, *only* the particular property "*connected with* the *principal* or *greater* thing"—as "an appendage or appurtenance" or "appurtenant *to*" —"the particular property" would be exempt.

The "*principal* or *greater* thing," "the particular *property*" referred to as "the seminary"—the school buildings and grounds,—"with" which the property exempted is defined as "connected" as "an appendage or an "appurtenance," would not be exempt, but, on the contrary, would be excluded from the exemption by the very language of the provision.

The result therefore of the construction given to the language of the provision by the State Court in 174 Ill. is, that the very property which the State has treated as exempt would not be within the provision, but would be taxable.

What then would be exempt? It is plain that other *real estate* would not be "connected with" "the particular property" known as the seminary—the school buildings and grounds—as "an appendage" or "an appurtenance."

Accordingly the State, acting on this decision, has taxed all the real estate *other than* the school buildings and grounds, and the taxes thus levied are the very taxes which the State Supreme Court has sustained as not within the exemption provision. (No. 140, Pr. Rec., 26; No. 265, Pr. Rec., 20.)

It follows that, if, giving the language of the exemption provision *the meaning given it by the State Supreme Court*, it did not exempt the school buildings and grounds, nor (as the state court has expressly held) the *real estate* other than the school buildings and grounds, the only property which it was intended to exempt was *personal* property.

Why then the language, "the property of *whatever* kind or description" etc., "shall be forever exempt," etc, if only *personal* property was intended?

Again, is *personal* property ever "an appendage" or "an appurtenance" to *real* estate?

But in any view, for the same reason that the State Court has held all the real estate other than the school buildings and grounds not within the exemption and therefore taxable, all *personal* property such as stocks, bonds, etc., held and used for the same purposes, would be taxable. The only property, therefore, which could by any possibility be within the exemption—giving its language the meaning given it by the State Supreme Court—would be *the furniture and apparatus in* the school buildings.

Again we say, can this *personal* property—furniture and apparatus—be said to be "an appurtenance" or "*appurtenant* to" the *real estate* known as "the seminary"—the school buildings and grounds—in the only sense in which that term is used as applied to property?

But aside from this, is it conceivable that the legislature used the broad and comprehensive language which was used in this provision, to express any such narrow and inconsequential exemption?

Can it be claimed that any such mere pretence of an exemption was present in the minds of the legislature when it used this language?

It is familiar law that in giving construction to a statute an absurd or unreasonable meaning will not be attributed to the legislature if the language admits of any other construction.

Lau Ow Bew v. *United States*, 144 U. S. 47, 59.
People ex rel. v. *Gaulter*, 149 Ill. 39.

4. The decision of the State Supreme Court, in both cases, is based on a construction of its previous decision in 174 Ill., which gives to the exemption provision a meaning wholly different from that given it by the same court in its opinion in 174 Ill., and one which it is impossible to derive from the words of the provision.

It is interesting to follow the process of evolution through which the provision in question has passed in the three different decisions of the Supreme Court of Illinois, and to compare the provision in the form finally given it by that court's construction with the provision as adopted by the legislature.

Section 5, as adopted by the legislature, reads:

"Sec. 5. That the property of whatever kind or description, *belonging or appertaining to said seminary* shall be forever free and exempt from all taxation for all purposes whatsoever."

Giving the section the construction given it by the Supreme Court of Illinois in 174 Ill., by substituting for the words "belonging to" and "said seminary" the words which the court held expressed the meaning intended, the section reads as follows:

"Sec. 5. That the property of whatever kind or description *connected with as an appendage or appurtenance or* appurtenant *to* said seminary (meaning by 'said seminary' *the particular property mentioned in section* 2 as 'the seminary'), shall be forever free and exempt from all taxes for all purposes whatsoever."

We have already shown that, giving the provision this

construction, it would not only make the precise property which the state *has not taxed* taxable (the school buildings and grounds), but in any view would render the provision so inconsequential and inconsistent as to be absurd, if not substantially meaningless.

When, therefore, in the two subsequent cases (the cases before the court), the state court, in applying its previous decision in 174 Ill., came to define its construction in a form which would include in the exemption the property which had not been taxed, and exclude the property which had been, an entirely new and different provision, wholly inconsistent with its actual decision in 174 Ill., was evolved.

In No. 140 the court, referring to 174 Ill., 177, say (No. 140, Pr. Rec., 54):

"In the latter case (174 Ill.) we held that Sec. 5 of the act of 1855 incorporating the appellant * * * refers only to *property used in immediate connection with the seminary, and does not include other property* which may be owned, rented or held by the said seminary as an investment, *even though the income thereof is used solely for school purposes.* We are satisfied with the conclusions reached in *People* v. *Theological Seminary, supra.*"

In No. 265 the court again repeated this construction of the decision in 174 Ill. Referring to that case and the subsequent case, No. 140, which followed it, the court say (No. 265, Pr. Rec., 31):

"In those cases we held that the provision in appellant's charter * * * refers only to *property used in immediate connection with the seminary, and does not include* other property which may be owned, held or rented by the corporation as an investment, *even though the income derived therefrom is used for the support of appellant's school.*"

Substituting for the words actually used in section 5 the words which the court says in these cases expresses the

meaning intended, as the result of its *construction of* the opinion in 174 Ill., 177, section 5 would read as follows:

"Sec. 5. That the property of whatever kind or description *used in immediate connection with* said seminary (meaning by 'said seminary' *the particular property mentioned in section* 2 as 'the seminary'), *and no other property*, shall be forever free and exempt from all taxation for all purposes whatsoever."

It will be seen that, as the result of this process of construction, we have in the two cases before the court an entirely *new* provision which it is impossible by any distortion of language to derive from the original section 5, and which is wholly inconsistent with the meaning which the court in its opinion in 174 Ill. gave to the language of the provision.

This is forcibly illustrated by the fact that, under the construction given in the opinions in the two cases before the court, quoted *supra*, the words "belonging or appertaining to" in the provision in question are given the meaning "*used in immediate connection with*," a meaning which they do not have either in the definitions adopted in 174 Ill., or in any definition given by any lexicographer.

5. The construction of the State Supreme Court is based wholly on the erroneous view that, instead of construing the provision of exemption in a fair and liberal sense, so as to promote the charitable object for which the corporation was formed, it should be construed narrowly by applying the rules of strict construction, and that the express provision of the charter that "this act shall be construed liberally in all courts," should be given a construction contrary to its plain intention, which would in fact render it wholly meaningless.

The entire reasoning of the opinion of the state court (174 Ill., 177) rests on the erroneous assumption that, in giving a construction to the provision, the rule of

strict construction should be applied, for the reason that it is a provision for exemption from taxation, and that *as a consequence* if the words "seminary" and "belonging" are capable of" two meanings, "one broad and the other restricted," the latter "*must* be" adopted.

We deny both the premise and the conclusion.

In the first place we say the rule of strict construction does not apply, as assumed, for two reasons:

First. The reasons of the rule of strict construction which apply to exemption provisions in favor of private corporations for pecuniary profit do not apply, and for that reason the rule itself does not apply, to exemptions in favor of charitable corporations, but the true rule as to such exemptions is that they should be construed liberally to promote the charitable objects for which the corporation was formed.

Second. Section 6 of the charter of plaintiff in error expressly provides that, "This Act * * * shall be construed liberally in all courts," and for that reason the rule of strict construction has no application.

(1) It was held in the following well-considered cases that, as the *reasons* of the rule of strict construction, as applied to exemptions from taxation in favor of corporations *for pecuniary profit*, do not exist as to exemptions in favor of charitable corporations, the rule of strict construction does not apply to exemptions in favor of such institutions, but that such exemptions should be construed liberally, to promote the charitable object for which the corporation was created.

Yale University v. *New Haven*, 71 Conn., 316.

Phillips Academy v. *Andover*, 175 Mass., 118.

Association for Colored Orphans v. *Mayor*, 104 N. Y., 581.
People v. *Sayles*, 50 N. Y. Supp., 8.
Long Branch Firemen's Relief Ass'n v. *Johnson*, 62 N. J. L., 625.
Sisters of Charity v. *Township of Chatham*, 52 N. J. L., 373.
State v. *Fisk University*, 87 Tenn., 233.
M. E. Church v. *Hinton*, 92 Tenn., 88.

The reasons of the distinction are well stated in *Yale University* v. *New Haven*, 71 Conn., 316. In that case the court, in holding that the buildings of Yale University which were occupied *exclusively as dormitories and dining halls by its students*, were within a statutory exemption from taxation, say (pp. 328–330, 333, 335, 338):

"The defendant further claims that * * * Sec. 3820 must be construed strictly, *because it is a statute exempting property from taxation.* * * * The rule that laws exempting property from taxation should be strictly construed, is well-settled and is based on solid reason. * * * The rule is limited by the reasons which brought it about. These are two: exceptions to a general rule should be distinctly stated; *private* privileges are obnoxious to the law and must be clearly expressed. The rule in truth is based on a presumption of intention; the legislature ordinarily intends its laws to apply to all equally; it does not intend to grant privileges to select individuals. * * * These reasons do not fully apply to the law under discussion. The non-taxation of public buildings is not the exception but the rule. The corporations whether municipal or private, which own and are by law charged with the maintenance of such untaxed buildings, *are not the recipients of special privileges, in any sense obnoxious to the law.* This clause of section 3820 does not exempt any *individuals* from the burden of taxation *that is common to all;* it does not grant to *one*, particular privileges denied to all others; it

declares that lands and buildings *sequestered to certain public uses, i. e., taken out of the body of private property and devoted exclusively to the common good, from which no individual can derive any profit,* are not taxable property. * * *

This clause of Sec. 3820 is not strictly so much an exemption from taxation, as *the declaration of a public policy well-settled and long established; it must therefore be construed reasonably so as to give full effect to the policy declared, as well as to avoid abuse and frustrate evasion.* * * *

Some of the considerations suggested in discussing the clause of Sec. 3820, apply to the construction of this charter. In granting such a charter the state *constitutes the corporation its agent, for a purely public purpose,* and intrusts it with authority, which can only be derived from the state, to confer degrees in scholarship and learning upon those found worthy. The legislative intent is indicated in the charter of Wesleyan College, which provides that the act *'shall be liberally construed, for every beneficial purpose hereby intended.'* 1 Private Laws, 472. * * *

This statute was intended to serve a great public use in pursuance of a most beneficial public policy, and the construction to be given such a statute requires that the intent shall not be defeated either by clear evasion or undue restriction."

In *Phillips Academy* v. *Andover*, 175 Mass., 118, the court, in giving construction to a provision of the charter of the Academy exempting its property from taxation, and holding that the particular property was within the exemption, say (p. 125):

"The statute is not to be construed *narrowly*, but *in a fair and liberal sense, and so as to promote that spirit of learning, charity and benevolence which it has always been one of the fundamental objects of the people of this state to encourage."*

In *Association for Colored Orphans* v. *Mayor*, 104 N. Y., 581, the court (PECKHAM, J.,) in holding certain property of the plaintiff, an incorporated charitable association, within a statutory exemption from taxation say (p. 587):

"The general principle that statutes of exemption should be strictly construed, we believe in and adhere to, but *such a case as this we do not regard as coming within that principle.* * * *

Such a case as this is wholly outside of the mischief intended to be prevented by the rule referred to. When *business corporations or interests* come to the courts seeking an exemption from the common burden of taxation, it behooves them to show plainly the law which grants the exemption claimed, and the courts will scrutinize it with great care and caution before allowing such claim."

In *People* v. *Sayles*, 50 N. Y. Supp., 8, the court, in holding that certain property was used "exclusively" for carrying on the purposes of the corporation—an educational institution—within the meaning of a statutory exemption, say (p. 11–12):

"The *policy* of the exemption is the moral and mental improvement of men or women, the formation and maintenance of religious, benevolent, educational, patriotic, scientific, literary, historical and burial associations, *all of which are aids to and accompaniments of a refined and advanced civilization.* This *policy* is not subverted, but, on the contrary, is promoted by permitting the relator to devote a portion of its premises to a profitable use, when they are not needed and cannot be used by its own members. * * *

In reaching this conclusion, I am not unmindful that taxation is the rule, and exemption the exception, and that an intent to exempt property from taxation is not to be presumed; *but the true rule is that statutes such as this should be construed, not narrowly by the letter, but liberally and broadly, in view of their object and spirit.*"

In *Long Branch Firemen's Relief Ass'n* v. *Johnson*, 62 N. J. L., 625, the court, referring to a provision of a statute exempting property of a firemen's relief association from taxation, say (p. 627):

"These acts concerning exemptions of this class are *liberally construed.*"

Citing,

Sisters of Charity of St. Elizabeth v. *Township of Chatham*, 52 N. J. Law, 373.

In *Sisters of Charity* v. *Township of Chatham*, 52 N. J. L., 373, the court, referring to a provision of the New Jersey statute, exempting from taxation, "all buildings used exclusively for charitable purposes," say (p. 376):

"This section of the statute relating to taxation should be construed, *not narrowly by its letter, but liberally and in view of its object and spirit.* This was the method applied in the case of *State* v. *Ross, Collector of Princeton*, 4 Zab., 497.

In *State* v. *Fisk University*, 87 Tenn., 233, the court, in holding certain property of the University exempt from taxation under a statutory provision for the exemption of property "held and used for purposes purely religious, charitable, scientific, literary or educational," say (pp. 238–41):

"It is unnecessary to resort to argumentation or to cite authorities for the general principle that exemptions from taxation are *generally* to be construed with great strictness. * * * *But this, like all other rules of construction, is made to rest upon the intention of the legislature.*

To apply this strict construction to individuals and to corporations *for profit* is but to announce the judgment of the courts upon the intention of the Legislature, while to give to a constitutional or legislative act granting an exemption *in aid of institutions literary and educational*, a construction that is within the spirit, policy, and purpose of the act and not opposed to its letter, is likewise *but ascertainiag and declaring the intent of the law-making power.* * * *

We only decide that the intention of the legislature must govern in ascertaining the extent of such exemptions, and that in arriving at such intention *the same strictnessof construction will not be indulged where the exemption is is to religious, scientific, literary and educational institutions that will be applied in considering exemptions to corpora-*

tions created and operating for private gain or profit. In the latter character of cases entirely different considerations move the legislature, and the exemptions are intended to go no further than they have in terms provided."

See also, *M. E. Church* v. *Hinton*, 92 Tenn., 188, which follows and quotes with approval the above case.

(2) Whatever the rule in the absence of an express provision in the charter—whether the rule of strict construction applies to an exemption provision in the charter of a charitable corporation—the legislature of Illinois in granting this charter expressed its intention not to leave the question open, and therefore, made an express provision on the subject.

Section 6 of the charter is as follows:

"Sec. 6. This Act to take effect and be in force from and after its passage, and *it* shall be deemed a public act, and *shall be construed liberally in all courts* for the purpose therein expressed."

Similar statutory provisions, either abolishing the rule of strict construction as to all statutes, or providing that it shall not apply to particular statutes, are not uncommon.

In Kentucky and California the rule of strict construction has been abolished as to all statutes, and by express statutory provision the same rules of construction apply to statutes to which the rule of strict construction would apply at common law, such as criminal and penal statutes, as to all other statutes.

Commonwealth v. *Davis*, 12 Bush (Ky.), 240.
People v. *Soto*, 49 Cal., 67.

So, in Illinois it is held that the general statutory provision as to the construction of statutes, that "all *general* provisions, terms, phrases and expressions, shall be *liberally construed*, in order that the true intent and meaning of

the legislature may be fully carried out," applies to *all* statutes, and should therefore be applied in giving construction to a criminal or penal statute.

Hankins v. *People*, 106 Ill., 628.
Maxwell v. *People*, 158 Ill., 248.
Peterson v. *Currier*, 62 Ill. App., 163.

In *Brown University* v. *Granger*, 19 R. I., 704, the charter of Brown University provided, among other things (p. 706), that, "*the college estate*" should be "exempted from all taxes."

It also provided that:

"This charter of incorporation and every part thereof * * * *shall be construed, reputed and adjudged in all cases most favorably* on the behalf and for the best benefit and behoof of the said Trustees and Fellows and their successors *so as most effectually to answer the valuable ends of this useful institution.*"

The court, in holding that certain lands which the university had received by endowment, but which were no part of the college buildings and grounds, were "*college* estate" within the meaning of the exemption provision, say (p. 707):

"The General Assembly evidently contemplated that the college would be endowed, and in order that it might be, and that it might be enfranchised, with the same privileges and immunities enjoyed by the American colleges and European universities, they ordained that the *college estate* should be freed and exempted from all taxes. *Nor did they stop here;* but, lest their desire to specially favor this valuable institution of learning should be misunderstood, they declared that 'the charter and every part thereof shall be good and available in all things in Law, according to our true intent and meaning, and *shall be construed, reputed and adjudged in all cases most favorably* on the behalf and for the best benefit and behoof of the said Trustees and Fel-

lows and their successors so as most effectually to answer the valuable ends of this useful Institution.'

It is difficult to see how the intention of the General Assembly to exempt *all* of the property *which might be owned by the plaintiff* from taxation could have been *more clearly and emphatically expressed.*"

It will be seen that the provision of section 6 applies to "*this Act,*" and therefore to every provision of it.

It will also be seen that the effect of this provision requiring a liberal construction to be given to the act, including the exemption provision, "in all courts," is to destroy the entire fabric of the reasoning of the State Supreme Court, which, as we have seen, is built up wholly on the rules of strict construction.

The State Court, to avoid this, in effect construes away the provision.

The Court after quoting the provision say (p. 181):

"We do not think this language was intended to or could be held to change or qualify *the general rules of construction* applicable to the section under consideration. Here the very question to be determined is, what is the *purpose* expressed in that section? And to say that liberal rules of construction must, under section 6, be applied in favor of the contention that all property belonging or appertaining to the corporation is exempt, would be to beg the whole question. In determining what *purpose* is expressed in the section resort must necessarily be had to the *general rules for considering such laws.* When that *purpose* is ascertained, liberal rules of construction, *if necessary,* are to be resorted to *to give effect to* such purpose."

This reasoning, which, it will be seen, applies equally to every section of the charter, would wholly nullify the provision.

It will be observed that the court treats the lan-

guage, "the purpose therein expressed," as referring to the *intention* of *each* provision. If the *intention* of each provision is to be *first* ascertained, and that by the rule of strict construction, before section 6 applies, the express provision that "This Act * * * shall be *construed liberally in all courts* for the purpose therein expressed," would be meaningless.

Take the provision in question. If the rule of strict construction is to be applied in construing it in order to ascertain its *intention,* for what purpose can it be construed "liberally in all courts"?

If section 6 only applies *after* each provision has been construed, and "the purpose," *i. e.,* the intention, has been ascertained by construction, what is there remaining to construe?

If the intention of each provision is to be ascertained by construing it before the provision of section 6 applies, what does section 6 refer to?

The provision that "This Act * * * *shall be construed liberally in all courts*" was clearly intended to have a meaning and should be given some effect.

There is no room for applying rules of construction except in ascertaining the *intention* of the different provisions, and when the *intention* is ascertained, there is no further occasion for construction.

The "purpose therein (in the Act) expressed" was to incorporate the Chicago Theological Seminary, with the object, as declared in Sec. 2, "to furnish instruction and the means of education to young men preparing for the gospel ministry."

It was to give effect to this purpose that "the Act," was to be "construed liberally in all courts."

The construction of the State Supreme Court that the word "purpose" in section 6 refers to the *intention* of each provision, and that, before the rule of liberal construction can be applied, this *intention* must be first ascertained, as to each provision, by applying the ordinary rules of construction, *including the rule of strict construction*, would render the provision wholly meaningless.

6. The decision of the State Supreme Court is not only based on the erroneous view that the rules of strict construction apply, but on the wholly erroneous assumption, that under these rules "if the language (of a provision) is capable of a broader, or more restricted meaning, the latter must be adopted." Such is not the effect of the rules of strict construction, even on the assumption that they apply, but on the contrary, the words used, if "capable of" two meanings, should be given their primary and ordinary meaning in the absence of other language showing that a different meaning was intended, and such meaning as will best express the legislative intention.

The State Court, in its opinion, after stating the rule of strict construction which it holds should be applied in giving construction to the provision, say (174 Ill., 181):

"*In other words*, if the language is *capable* of a broad or more restricted meaning the latter *must* be adopted."

Assuming that the rule of strict construction applies (which we deny for reasons stated *infra*), it will be seen that the court here holds that, under the rule of strict construction, if the language used in the provision is "*capable* of" two meanings, the one "a broad" and the other "a more restricted" meaning, "the latter,"—the "more restricted"—"MUST be adopted."

Starting with this assumption as to the *effect* of the rule of strict construction (which we shall show is clearly erroneous), as the basis of its reasoning, the court finds that the two words "seminary" and "belonging," being "capable

of" two meanings, the "more restricted" meaning "*must* be adopted."

It only looks to the particular words to find that they are "capable of" two meanings, and because it finds they are, adopts the "more restricted" in obedience to the supposed rule of strict construction that, "if the language is *capable* of a broad *or* more restricted meaning *the latter must* be adopted."

Thus, in construing the words "belonging to," the court say that "belong" "*may* mean *ownership* and *very often* does, but that that is not its *only* meaning."

Having reached this conclusion, wholly irrespective of the fact, as we have seen, that ownership is the primary and natural meaning of the word, and of all other rules of construction, the court, in obedience to the supposed rule that where a word is "capable of" two meanings the more restricted "*must* be adopted," adopts this meaning.

So as to the word "seminary." The court, assuming that the word has the meaning of "certain *property*"—the school buildings—in section 2, although it manifestly has a different meaning in the title and in section 4—the incorporated institution—concludes, without assigning any other reason, that it should therefore be given the same meaning in section 5.

It will be seen that this assumption as to the meaning of the rule of strict construction eliminates all consideration of the actual *intention* of the Legislature, or of the reasonableness of the particular meaning, and makes the mere fact that the word is "capable of" the two meanings, and that the one is "more restricted" than the other, conclusive of the question.

That the court's conclusion rests wholly on this errone-

ous assumption as to the meaning of the rule of strict construction—that if the word is "capable of" two meanings, "the one broader" and "the other more restricted," the latter "*must* be adopted"—is forcibly illustrated by the fact that although, as we have already shown, its construction attributes a manifestly unreasonable and in fact absurd meaning to the provision, nothing is said by the court as to this effect of the construction.

This assumption of the court as to the meaning of the rule of strict construction is wholly erroneous.

The authorities are uniform that the rule of strict construction where it applies does not in any way change or override the other general rules of construction.

The question where the rule of strict construction applies, as where it does not, is, What was the *intention* of the language used? If the language used admits "of two meanings" the question still is, which of the two meanings was it the intention of the law maker that it should have?

The rule of strict construction does not require that either one or the other of these two meanings "must be "adopted, or in any way change or override the familiar and well settled rule that, where a word admits of two meanings, the natural and ordinary meaning should be adopted in the absence of other provisions showing a contrary *intention*.

In Endlich on the Interpretation of Statutes, Sec. 337, the author says (p. 466):

The paramount object in construing penal as well as other statutes, is to ascertain the legislative intent; and the rule of strict construction is not violated by permitting the words to have their full meaning, *or the more extensive of two meanings, when best effectuating the intention.* They are indeed *frequently* taken * * * *in the widest sense,* sometimes even in a sense *more wide than*

etymologically belongs or is *popularly* attached to them, *in order to carry out effectually the legislative intent.*"

In *U. S.* v. *Winn*, 3 Sumn., 209, (quoted with approval in Black on Interpretation of Statutes, p. 290) the court (*Story*, J.) referring to the rule of strict construction as applied to penal statutes, says (p. 211):

"Where the words are general and include various classes of persons, I know of no authority which would justify the court in restricting them to one class, or *in giving them the narrowest interpretation*, where the mischief to be redressed by the statute is equally applicable to all of them. And where a word is used in a statute which has *various known significations*, I know of no rule that requires the court to adopt one in preference to another *simply because it is more restrained, if the objects of the statute equally apply to the largest and broadest sense of the word.*"

In *U. S.* v. *Hartwell*, 6 Wall., 385, the court (Swayne, J.) uses the following language (quoted with approval in 23 Am. & E. Enc. L., p. 378) in referring to the rule of strict construction (p. 395):

"We are not unmindful that penal laws are to be construed strictly. * * * The object in construing penal, as well as other statutes, is to ascertain the *legislative intent.* That constitutes the law. * * * *It must not be defeated by a* FORCED *and* OVERSTRICT *construction. The rule does not exclude the application of common sense to the terms made use of in the act, in order to avoid an absurdity which the legislature ought not to be presumed to have intended.* * * * The proper course in all cases is to adopt that sense of the words which *best harmonizes with the context and promotes, in the fullest manner, the policy and objects of the legislature.* The rule of strict construction *is not violated* by permitting the words of the statute to have their full meaning, *or the more extended of two meanings*, as the wider popular instead of the more narrow technical one."

In *Meadowcroft* v. *People*, 163 Ill., 56, the Supreme Court

of Illinois, in giving construction to a penal statute, say (p. 70):

"It is urged that the statute is penal, and must therefore be strictly construed. But the rule of strict construction does not prevent our calling in the aid of other rules and giving to each its appropriate scope, *the ascertainment of the legislative will being the primary consideration, after all.* (Bishop on Stat. Crimes, Sec. 200.) *A strict construction is not violated by giving the words of a statute a reasonable meaning, according to the sense in which they were intended, and disregarding captious objections, and even the demands of an exact grammatical propriety.* (*Idem*, Sec. 212.)"

7. The construction of plaintiff in error does not "extend the meaning of the words used, by implication," as erroneously held by the State Supreme Court.

The State Court say (174 Ill., at p. 182):

"To say, as is contended by appellee, that 'said seminary' was intended to mean the corporation, is to extend the meaning of the words *by implication*, which is not permissible."

As we have already pointed out, to give the words "said seminary" the meaning for which we contend is, in any view, only to give to "seminary" the meaning it has in the title of the act, and also in the preceding sections 1 and 4. It is not, therefore, "to extend the meaning of these words by implication" or otherwise.

This is illustrated by the many provisions in different charters passed by the same legislature in which the words, "said seminary," "said academy" or "said college," referred to *infra*, are unmistakably used as referring to the incorporated institution—the corporate entity—as distinguished from the mere buildings occupied by the institution. (See Appendix, pp. 5-13.)

8. The construction of plaintiff in error is further decisively confirmed by a consideration of other similar charters containing provisions for exemption from taxation passed at the same and other sessions.

By the constitution of 1848 unlimited power was given the legislature to promote the establishment of educational and other charitable institutions by grants of special charters and of exemptions from taxation.

During the period which followed the adoption of this constitution—until the adoption of the constitution of 1870, which limited the power of the legislature over the subject—the legislature of Illinois, in pursuance of the policy manifested by the constitution, at each session granted to different educational institutions special charters containing exemptions from taxation.

We have printed, and file with this brief as an Appendix, the material provisions of many of these charters, as forcibly and in fact decisively confirming our construction of the exemption provision in question.

In *Vane* v. *Newcombe,* 132 U. S., 220, this court, at 235, quote with approval the following language of the court in *Stout* v. *Board of Commissioners,* 107 Ind., 343-348:

"In cases of doubt or uncertainty acts *in pari materia,* passed either before or after, and whether repealed or still in force, may be referred to in order to discern the intent of the legislature *in the use of particular terms* or in the enactment of *particular* provisions and, within the reason of the same rule, contemporaneous legislation not precisely *in pari materia* may be referred to for the same purpose."

In 23 Am. & Eng. Ency. of Law, under the title "Statutes," (p. 311), it is said:

"Statutes which are not inconsistent with one another and which relate to the same subject-matter are *in pari materia,* and should be construed together and effect be

given to them all, although they contain no reference to one another and were passed at different times. Especially should effect be given, if possible, to statutes *in pari materia* enacted at the same legislative session. So contemporaneous legislation, not precisely *in pari materia* with the statute to be construed, may be referred to on the question of intent.

Not only may contemporaneous and prior statutes be considered in construing a given act, but a subsequent statute may often aid in the interpretation of a prior one. Private acts conferring special privileges and the general acts on the same subject are also to be construed together and effect is to be given to both, if possible.

In construing a given act the meaning of words or terms as used therein may be gathered from the consideration of other acts *in pari materia* in which such words or terms were also used."

See, also,

Chase v. *Lord*, 77 N. Y., 1, at 18–19.
Middleton v. *Greeson*, 106 Ind., 18, at 24.
Levering v. *Philadelphia, Germantown & Norristown R. R. Co.*, 8 Watts & S., 459, at 463.
Reiche v. *Smythe*, 13 Wall., 162.

We contend that a reference to these different charter provisions decisively confirms our construction of the provision in question.

(1) On reference to the different charters passed by the same legislature, containing provisions for exemption from taxation, it will be seen that there are many passed at different sessions which provide for a *partial* exemption from taxation identical (or substantially so) with the exemption the State Court holds was *intended* by the provision in question, but in which specific language was used clearly defining the particular property intended to be exempted. (See Appendix, pp. 1-5.)

Thus, at the same session, that of 1853, at which, in the act incorporating the Galena Theological Seminary, it granted to that institution an exemption from taxation *in the identical language* of the exemption in question (Appendix, p. 5), the legislature, to express the *partial* exemption which it granted to the Oregon Union Institute by its charter (Appendix, p. 3), made the following provision:

"Sec. 16. *The tract of land on which the buildings of the institute may be erected, together with all the furniture, books and apparatus belonging to said institute,* shall be exempt from all taxes."

So, at the same session at which it passed the act incorporating plaintiff in error, that of 1855, for the purpose of expressing a *partial* exemption, granted to the German School Association of Muscoutah substantially the same as the State Court holds was *intended* by the provision in the charter of plaintiff in error, it provided (Appendix, p. 3):

"Sec. 9. *The school house of the Association and the fixtures in the same, the books and library of the Association and the lot of ground on which their school house is or may be erected, shall be exempt from all taxes."*

See, also, and compare the exemption provision in the charter of the Carbondale College, passed at the session of 1857 (Appendix, p. 8), *in the identical language of the provision in question,* with the *partial* exemption provisions in the charters of the McHenry Institute (Appendix, p. 3) and Almira College (Appendix, p. 4), passed at the session of 1857.

These provisions show that when the Legislature of Illinois made a *partial* exemption, such as the State Court has held was intended by the provision in question, it knew how to use, and was acustomed to use, the specific language appropriate to express that intention. They also show that the

nature of the different partial exemptions was a matter of consideration, and that carefully and definitely expressed provisions were inserted when such *partial* exemption was intended.

Why, if any such partial exemption as the State Supreme Court has found was intended, did the legislature use such broad language, so wholly inappropriate, instead of the phrases which it had used in so many other charters and which would have been appropriate and natural to express that intention?

The holding of the State Court comes to this, that the Legislature of Illinois had determined to make a *partial* exemption in the particular case instead of the full exemption given the Galena Theological Seminary, and that for this purpose, instead of using the specific language used in other charters to define such *partial* exemption, it used the *same language* which it used in the Galena Seminary charter to express a *total* exemption.

It is claimed, however, that the intention was that because the words "the seminary shall be located," etc., were inserted in the previous section 2, the language of the exemption provision, which would otherwise express a *total* exemption, should only mean the narrow and limited *partial* exemption it expressed by specific language in other charters passed at the same and previous sessions.

Or, to put it another way, the claim is that the legislature in inserting in section 2 the words "the seminary shall be located," etc., not only intended to provide as to the location of the institution but to change the *total* exemption, which would otherwise be expressed in the broad language of Section 5, to the particular partial exemption which the State Court has held was intended.

(2) We find the same provision for exemption from taxation, *in the identical language*, with the same title to the Act, a like corporate name, etc., as in the charter of plaintiff in error, in different charters incorporating similar educational institutions, passed by the Legislature of Illinois *at the same and other sessions*, both before and after, in which there was no section like section 2, or other provision on which to base the reasoning which is the sole ground of the conclusion of the Supreme Court of Illinois. (See Appendix, pp. 5-13.)

Not only this, but in many of these different charters we find such references to the word "seminary" in other provisions as conclusively shows that the corporate entity was intended to be described by it. (See Appendix, pp. 6, 8, 12.)

As we have already shown, the intention to create, by the broad and general language of the provision in question, a partial and limited exemption, only covering the property *"used in immediate connection with"* the school buildings, as distinguished from a *total* exemption, is found by the State Supreme Court in the fact alone that in the *previous section* (Sec. 2) the word "seminary" is used, as the court assumes, as referring to "certain *property*," the school buildings, etc.

If there was no section 2, or if the words "the seminary" had not been used in that section, the entire basis of the reasoning of the State Court would be gone. There would then be no room for question that the words "*said* seminary" in the exemption provision referred to the institution incorporated by the Act and mentioned in the title and the previous section 4.

On reference to several of these other special charters passed by the same legislature (two at the *same session*), in

which there was provision for exemption from taxation *in the identical language* of the provision in the charter of plaintiff in error, it will be seen that there was no previous section like section 2, on which a like argument, that the word "seminary" was used as referring to "particular property," could be based.

Thus, in the charter of Galena Theological Seminary (Appendix, p. 5), passed at the next preceding session of the legislature, in 1853 (in which there was the same exemption provision, and other provisions in the same language, indicating that the charter of plaintiff in error was drafted from it), there was no like provision or previous use of the word "seminary" in connection with the word "located," giving ground for the argument that certain property was referred to. On the othe hand, the word "located" is found as in section 1, in a connection which shows that it clearly refers to the incorporated institution. In this charter the words "said seminary" in the exemption provision could refer only to the incorporated institution; there is no room for construing this general provision of exemption as a partial exemption.

So in the charter of the Duquoin Seminary, passed at the same session as the charter of plaintiff in error, the exemption provision (section 8) is in the identical language of the provision in question—"all property of whatever kind and description *belonging or appertaining to said Seminary.*" (Appendix, pp. 6, 7.)

On the other hand, there is no previous mention of "the seminary" in a connection which even admits of the construction that "particular *property*" (the school buildings) was intended. On the contrary, there is the same use of

the word "seminary" in the title, "An Act *to incorporate* the Duquoin Female Seminary," followed by the words "said seminary," in section 5, preceding the exemption provision, in such a connection that they could only refer to the incorporated institution—"The board of directors shall faithfully apply *all funds* collected or hereafter to be collected *for said* seminary."

See also, as still more forcibly illustrating this, the charters of the Carbondale College, passed in 1857 (Appendix, p. 8), and of the Lake Forest University, passed in 1865 and amended in 1869 (Appendix, p. 12).

Did the *same language* in these charters mean a total exemption, and in the particular charter of plaintiff in error mean only the partial and narrow exemption claimed?

Will it be held that the Galena Theological Seminary, Carbondale College, the Lake Forest University, etc., are entitled to a *total* exemption—as they clearly are—and that it was the intention of the *same* provision in the charter of plaintiff in error to only give to plaintiff in error the narrow, partial exemption claimed, solely because this particular section 2 was inserted?

(3) In a number of the special charters, passed at different sessions, the same word "located" (on which, as we have seen, the State Court bases its conclusion that "the seminary" in section 2 referred to the school buildings) is used in the *first* section in a connection which necessarily refers to the institution incorporated by the Act instead of the school buildings. (Appendix, pp. 13-15.)

The only difference in the charter in question is that the provision as to the *location* is put in a separate section in connection with *the object*. But the word "located" was manifestly used in the same sense as in the other charters.

This is illustrated by a comparison of the charter of the Galena Theological Seminary, passed in 1853 (from which the charter of the Chicago Theological Seminary was evidently taken), with the charter of plaintiff in error, passed in 1855. On comparison of these two charters it will be seen that the charter of the Chicago Theological Seminary follows that of the Galena Theological Seminary almost literally, with a few slight changes of form, one of which consists in putting the *location* in the second section with *the object,* instead of leaving it in the first section. (Appendix, p. 5.)

For other charters in which the word "located" is used in the same sense, as referring to the corporation, as in the charter of the Galena Theological Seminary, see Appendix, pp. 13-15.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1902.

Office Supreme Court
FILED
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JAMES H. McKENNEY,
Clerk

THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL SEMINARY,
Plaintiff in Error,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS, ex relatione SAMUEL B. RAYMOND, County Treasurer and ex officio County Collector of Cook County, Illinois,
Defendant in Error.

No. 140.

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Defendant in Error.

No. 265.

APPENDIX TO BRIEF FOR PLAINTIFF IN ERROR.

Provisions in different Special Charters passed by the Legislature of Illinois referred to in Brief for Plaintiff in Error.

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APPENDIX TO BRIEF FOR PLAINTIFF IN ERROR.

In this appendix we have printed in full the material provisions of the different charters passed by the Legislature of Illinois, which contain exemptions from taxation, referred to in the brief for plaintiff in error, as follows:

1. Charters in which the legislature granted, by *specific* language defining the exemption, the same partial exemption which the Supreme Court of Illinois holds was intended by the *general* language of the exemption provision in the charter of plaintiff in error.

2. Charters containing exemption provisions identical in language with the provision in the charter of plaintiff in error, and the intention of which to exempt all the property of the incorporated institution, is indisputable.

3. Charters in which the word "located," etc., is used in a connection which indisputably shows that the incorporated institution was referred to.

I.

CHARTERS IN WHICH THE LEGISLATURE GRANTED, BY SPECIFIC LANGUAGE DEFINING THE EXEMPTION, THE SAME PARTIAL EXEMPTION WHICH THE SUPREME COURT OF ILLINOIS HOLDS WAS INTENDED BY THE GENERAL LANGUAGE OF THE EXEMPTION PROVISION IN THE CHARTER OF PLAINTIFF IN ERROR.

1847.

"An Act to incorporate the Illinois Conference Female Academy." (Private Laws of 1847, p. 52.) Made a public act.

"Sec. 5. * * * The lot of land *on which the buildings may be erected*, not exceeding five acres, *with the buildings and appurtenances thereof*, shall be exempt from taxation for state, county or corporation purposes."

1851.

"An Act to incorporate the Illinois Liberal Institute." (Private Laws of 1851, p. 246.) Made a public act.

"Sec. 16. The tract of land *on which the buildings of the institute may be erected, together with all furniture, books, and apparatus belonging to said institute,* shall be exempt from all taxes."

1853.

"An Act to incorporate the Oregon Union Institute." (Private Laws of 1853, p. 497.) Made a public act.

"Sec. 16. *The tract of land on which the buildings* of *the Institute may be erected, together with all the furniture, books and apparatus belonging to said institute,* shall be exempt from all taxes."

1855.

"An Act to incorporate the Illinois Military Institute." (Private Laws of 1855, p. 509.)

"Sec. 7. The *lot of land on which the building may be erected,* not exceeding in quantity twenty acres, *with the improvements thereon and all the personal property* of the corporation shall be exempt from taxation for any purpose whatever."

"An Act to incorporate the German School Association of Muscoutah." (Private Laws of 1855, p. 514.) Made a public act.

"Sec. 9. *The school house of the association and the fixtures in the same, the books and library of the association and the lot of ground on which their school house is or may be erected,* shall be exempt from all taxation."

1857.

"An Act to incorporate the McHenry Institute." (Private Laws of 1857, p. 1374.) Made a public act.

"Sec. 16. *The tract of land, not exceeding twenty acres, on which the buildings of the institute may be erected, together with all furniture, books and apparatus belonging to said institute,* shall be exempt from all taxes."

"An Act to incorporate the Almira College, Greenville, Bond County, Illinois." (Private Laws of 1857, p. 582.)

"Sec. 4. *The college buildings and the grounds connected therewith, and all the books, furniture, cabinets, apparatus, and all other things and means for affording instruction,* shall be forever exempted from state and county taxes."

1859.

"An Act to incorporate the Nashville Male and Female Seminary." (Private Laws of 1859, p. 370.)

"Sec. 11. *The block of lots or tract of land on which the buildings may be erected belonging to said institution,* not exceeding ten acres of land, *with the improvements thereon, and all personal property* belonging to said corporation, shall be exempt from taxation for any purpose whatever."

1865.

"An Act to incorporate the Grand Prairie Seminary and Commercial College." (Private Laws of 1865, Vol. 1, p. 23.) Made a public act.

"Sec. 9. The property, real and personal, of *said college* shall be exempt from any taxation or assessments, for state, county, township, road, city, or school purposes, *while owned and occupied by the college for college or school purposes.*"

1867.

"An Act to incorporate the Simpson Seminary and Collegiate Institute." (Private Laws of 1867, Vol. 1, p. 10.) Made a public act.

"Sec. 13. The property, both real and personal and mixed, *belonging to* this corporation at any time during its existence, *such as may be used and occupied for college purposes,* shall forever be and remain free from taxation.

1869.

"An Act to amend an act entitled 'An Act to incorporate the Virginia Seminary of the Cumberland Presbyterian Church,' approved June 14, 1852, and an act amendatory thereof, approved June 1, 1857." (Private Laws of 1869, Vol. 1, p. 49.) Made a public act.

"Sec. 9. *The lot of land on which the buildings stand,* not exceeding in quantity twenty acres, *with the improvements thereon, and all the personal property* of the corporation, shall be exempt from taxation for any purpose whatever."

II.

CHARTERS CONTAINING EXEMPTION PROVISIONS IDENTICAL IN LANGUAGE WITH THE PROVISION IN THE CHARTER OF PLAINTIFF IN ERROR AND THE INTENTION OF WHICH TO EXEMPT ALL THE PROPERTY OF THE INCORPORATED INSTITUTION IS INDISPUTABLE.

1853.

"An Act to incorporate the Galena Theological Seminary." (Private Laws of 1853, p. 274.) Made a public act.

"Sec. 1. That (the persons named) and their successors, are hereby constituted a body politic and corporate under the name and style of the 'Galena Theological Seminary,' *to be located at or near* the City of Galena, and by that name and style to remain, and shall shall have perpetual succession, with power to sue and be sued, etc.

Sec. 2. The government of *the seminary* shall at all times be vested in a *board of directors,* which shall consist of eighteen members, etc.

Sec. 3. * * * Each class of directors shall hereafter be chosen for and hold their office during the term of three years, with the exceptions specified in the constitution of *said Theological Seminary.* * * * that any

director may be eligible to a re-election, at the discretion of the appointing power, which appointing power is hereby forever vested in the presbyteries connected with that body or denomination of christians known as the Constitutional Presbyterian Church of the United States of America, and in the board of directors as provided in the constitution of *said Theological Seminary.*

Sec. 6. That all property of whatsoever kind and description *belonging or appertaining to said seminary* shall be and forever remain free and exempt from all taxation, for any and all purposes whatever.

Sec. 7. This act to take effect and be in force from and after its passage, and it shall be deemed as a public act, and *shall be construed liberally in all courts* for the purposes therein expressed."

1855.

"An Act to incorporate the Duquoin Female Seminary, in Perry County." (Private Laws of 1855, p. 370.) Made a public act.

"Sec. 1. That (the persons named) and their successors be and are hereby constituted a body politic and corporate under the name and style of 'Duquoin Female Seminary' to be *located in or near* the Village of Duquoin, in section No. twenty-seven, in township No. six south, of range No. one, west of the third principal meridian, County of Perry, and by that name and style to remain, and shall have perpetual succession * * * and be capable in law of taking and holding, by gift, grant and devise or otherwise, etc.

Sec. 2. The *government* of this *institution* shall at all times be vested in a board of directors, consisting of eighteen members. * * *

Sec. 5. The board of directors shall faithfully apply *all funds* collected or hereafter to be collected for *said seminary* according to their best judgment. * * *

Sec. 7. It shall be the duty of the board of directors to appoint one of their number treasurer who shall be required to give bond. * * * and all process against said corporation shall be by summons, and service of the

same shall be by leaving an attested copy with the *treasurer of said institution* at least thirty days before the return day thereof.

Sec. 8. All property of whatever kind and description *belonging or appertaining to said seminary* shall be and forever remain free and exempt from all taxation for any and all purposes whatever."

"An Act to incorporate the Marengo Collegiate Institute of the Presbytery of Chicago. (Private Laws of 1855, p. 503.) Made a public act.

"Sec. 1. That (the persons named) and their associates and their successors in office be and they are hereby constituted and created a body politic and corporate under the name and style of 'The Marengo Collegiate Institute of the Presbytery of Chicago' and by that name and style to remain and have perpetual succession; that *said institute* shall be *located at or near* the Village of Marengo in the County of McHenry, and State of Illinois, and *under the name and style above shall have power to make contracts, sue and be sued.* * * * to make and alter, from time to time, such by-laws as they may deem necessary for *the government of said institution*, its officers and servants. * * *

Sec. 2. The government *of the institute* shall at all times be vested *in a board of trustees*, which board shall consist of not less than five nor more than twelve members, one-third of which board shall constitute a quorum for the transaction of *all business of the institution* other than as is hereinafter provided for. * * *

Sec. 6. The said *institute* shall be open to all denominations of christians and the profession of any particular religious faith shall not be required of those who become students.

Sec. 8. All property of whatsoever kind and description *belonging or to belong to said institution or appertaining thereto* shall be and forever remain free and exempt from all taxation for any and all purposes whatsoever.

Sec. 10. This act to take effect and be in force from and after its passage; and it shall be deemed a public act, and shall *be construed liberally in all courts* for the purposes therein expressed."

1857.

"An Act to incorporate the Carbondale College, in Jackson County." (Private Laws of 1857, p. 265.) Made a public act.

"Sec. 1. That (the persons named) be and they are hereby created a body corporate and politic, to be styled 'The President and Trustees of the Carbondale College' and by that name and style to remain and have perpetual succession, with full power to sue and be sued, etc. * * * to make, and again, at their pleasure, to alter and amend a constitution and by-laws for the government and management of *said institution.* * * *

Sec. 2. That the *said college* shall be *located in or near* the Town of Carbondale, County of Jackson and State of Illinois. The object shall be to furnish instruction and the means of education to all persons who shall comply with the by-laws and regulations of *the institution.* * * *

Sec. 4. The *board of trustees* shall have power to appoint an executive committee and such other and additional agents or officers as they may deem necessary, and also such principals, professors and teachers as the good *government* and course of instruction adopted in *said institution* may require. * * * and prescribe and direct the course of studies to be pursued in *the college,* and also to confer such degrees and rewards of merit as are consistent with the object of the aforesaid *institution.*

Sec. 5. That the property, of whatsoever kind or description it may be, whether real, personal or mixed, already acquired or hereafter to be obtained, *belonging or appertaining to said college,* shall be forever free and exempt from all taxation, for all and every purpose whatever, whether county, school, road or state taxes.

Sec. 7. The president *and trustees* of *said college* shall faithfully apply *all funds by them collected or hereafter to be acquired,* according to their best judgment, in erecting suitable buildings; supporting the necessary principal, instructors, teachers, officers and agents; in purchasing necessary and useful books, maps, charts, globes, philosophical, chemical and other apparatus, to promote sound learning in said institution.

Sec. 9. *The treasurer and all other officers* and agents of the *said college,* when required so to do by the said president and trustees, or a majority of them, shall give bond. * * *

Sec. 10. The president and trustees of *said college* shall hold at least one stated meeting in each year. * * *

Sec. 12. This act shall be deemed a public act and shall be in force from and after its passage, and *shall be liberally construed in all courts* in this state for the purposes herein expressed."

1861.

"An Act to Incorporate the Bloomingdale Academy." (Private Laws of 1861, p. 9.)

Sec. 1. That (the persons named) and their successors in office, be and are hereby created a body politic and corporate, under the name and style of 'The President and Trustees of the Bloomingdale Academy', and by that name and style to remain and have perpetual succession. The *said academy shall be and remain* in or within one-half mile of the Town of Bloomingdale, in the County of Du Page, and State of Illinois. The number of trustees shall not exceed nine. * * *

Sec. 9. All deeds or instruments of writing, for the conveyance of real estate to the said corporation shall be made to 'The President and Trustees of Bloomingdale Academy' and their successors in office, for the use of *said academy.*

Sec. 11. All property, of whatever kind and description, *belonging or appertaining to said academy,* shall be and forever remain free and exempt from all taxation for any and all purposes whatever. The amount of property so exempt not to exceed twenty-five thousand dollars.

Sec. 12. There shall be attached to *said academy* a department, in which shall be taught such branches as are usually taught in common schools; and *the trustees of said academy* shall receive from the school treasurer of the town such amount and proportion of the common school fund as is received by other common schools; provided said trustees comply with the laws regulating common schools.

Sec. 13. The legal voters of the Town of Bloomingdale may vote at their next annual town meeting 'For Academy' or 'Against Academy' by endorsement on their ballots. * * * (providing for a tax); and said county clerk shall compute said tax which shall be collected as county taxes are by law collected, and, when collected, shall be by the collector paid over to the township treasurer of said township, and shall be by him paid out on the order of the president and secretary *of the academy,* for the purpose of erecting suitable buildings *for the use of said academy;* and said trustees of schools shall cause such tax upon the property of said town to be assessed, annually, as will be necessary to defray the expenses of teachers' wages, fuel, and other incidental expenses *in said academy,* by certifying the same, etc. * * * The teachers in *said academy* shall be examined and qualified by the school commissioner of DuPage County; shall keep schedules, and shall return the same as districts are required by law to do; and the trustees of schools *shall apportion to said academy,* upon said schedules, at each of their regular meetings, according to the grand total number of days taught, *their proportion of the town, county and state funds,* the same as though *said academy* were one of the school districts of said township forty north, range ten, east of the third principal meridian. * * *

1867.

"An Act to incorporate Southern Illinois College in Carbondale, Jackson County." (Private Laws of 1867, Vol. 1, p. 32.) Made a public act.

"Sec. 1. That (the persons named) and their successors be and are hereby created a body corporate and politic, to be styled 'The President and Trustees of Southern Illinois College,' and by that name to remain and have perpetual succession, with full power to sue and be sued. * * * to make, alter and amend, at their pleasure, a constitution and by-laws for the management and government of *said institution,* and finally to do whatever may be necessary to carry out fully the object of this act of incorporation.

Sec. 2. That the *said college shall be located* in or near the Town of Carbondale, County of Jackson, State of Illinois. The object shall be to furnish instruction and means of education to all who may comply with the by-laws and regulations *of the institution,* and shall be open equally to all persons for this purpose, etc.

Sec. 6. The board of trustees shall have power to appoint an executive committee and such other and additional officers and agents as may be necessary, and also such principals, professors and teachers as the good government and course of instruction adopted in *such institution* may require, and to remove any of them for sufficient reasons. They shall prescribe the course of studies to be pursued *in the college,* and to confer such degrees and rewards of merit as may be consistent with the object of the *aforesaid institution.*

Sec. 7. That the property of whatsoever kind or description it may be, whether real, personal or mixed, already acquired or hereafter obtained, *belonging or appertaining to said college,* shall be forever free and exempt from all taxation for all and every purpose whatever, whether state, county, city or village, corporation, school or road taxes.

Sec. 10. The president and trustees of *said college* shall faithfully apply all the *funds* by them collected or hereafter acquired, according to their best judgment, in erecting suitable buildings, supporting the necessary instructors, officers and agents, in purchasing useful and necessary books, maps, charts, globes and chemical and philosophical apparatus, or promote sound learning in *said institution.*

Sec. 12. The treasurer and all agents of *said college,* who shall be intrusted with money, funds or other property of *the institution,* shall, when required to do so by the trustees, give a bond for the faithful discharge of such trust, etc.

Sec. 13. The president and trustees of *said college* shall hold one stated meeting each year, etc.

Sec. 15. This act shall be deemed a public act, and shall be in force from and after its passage, and shall be *liberally construed in all courts* in this state, for the purpose herein expressed."

1869.

"An Act to amend an act entitled 'An Act to amend "An Act entitled an act to incorporate the Lind University," approved February 13th, 1857, and approved February 16th, 1865.'" (Private Laws of 1869, Vol. 1, p. 43.)

"Sec. 1. * * * That all property, of whatsoever kind and description, *belonging or appertaining to* the *Lake Forest University,* shall be and forever remain free and exempt from all taxation for state, county or municipal purposes, excepting as is provided in section (13) thirteen of the said act, approved February 16th, 1865, of which this act is amendatory."

"An Act to amend an act entitled 'An Act to incorporate the Lind University,' approved February 13, 1857." (Private Laws of 1865, Vol. 1, p. 49.) Made a public act.

"Sec. 1. * * * That the name and style of Lind University, created by the act mentioned in the title to this act, be, and the same is hereby changed to 'Lake Forest University,' by which name it shall hereafter be known.

Sec. 2. The present board of trustees of said Lind University shall be, and the same are hereby constituted and continued *as the trustees of Lake Forest University,* and by *said name and style* are hereby created a body corporate and politic, and by *said name* shall remain and have perpetual succession.

Sec. 3. The number of trustees *of said university,* instead of twenty, as heretofore, shall be not less than sixteen, but may be increased to twenty-five, including the president for the time being of the institution, who shall be a trustee *ex officio.* * * *

Sec. 10. The trustees of *said university* shall have authority from time to time to prescribe and regulate the course of studies to be pursued in *said university,* and in all the departments attached thereto; to fix the rate of tuition, etc.

Sec. 12. It shall not be lawful for the trustees of *said university* to apply any of said lands, so donated, or to be donated to them, as aforesaid, or any part of the proceeds or

credits thereof, *to any institution* other than those *located at* Lake Forest and on the lands donated. * * *

Sec. 17. This act shall take effect and be in force from and after its passage, and shall be deemed a public act, and shall be *liberally and benignly construed in all courts and places* in the furtherance of the objects thereof."

III.

CHARTERS IN WHICH THE WORD "LOCATED," ETC., IS USED IN A CONNECTION WHICH INDISPUTABLY SHOWS THAT THE INCORPORATED INSTITUTION WAS REFERRED TO.

1847.

"An Act to incorporate a Literary and Theological Institution of the Evangelical Lutheran Church of the Far West, *to be located* in Hillsboro, Montgomery County, Illinois."

(Private Laws of 1847, p. 57.)

"Sec. 1. That (the persons named) are hereby created *a body corporate and politic* by *the name, style and title of* the Board of Trustees of the Literary and Theological Institute of the Far West, *located in* Hillsboro, Montgomery County, Illinois, and they and their successors in office, as such, shall have power to sue and be sued," etc.

1853.

"An Act to incorporate the Galena Theological Seminary."

(Private Laws of 1853, p. 274.) Made a public act.

"Sec. 1. That (the persons named) and their successors, are hereby constituted *a body politic and corporate* under *the name and style of* the Galena Theological Seminary, *to be located at or near the City of Galena;* and *by that name and style to remain, and shall have* perpetual succession, with power to sue and be sued, etc."

1857.

"An Act entitled 'An Act to incorporate the Aledo Collegiate Institute.'" (Private Laws of 1857, p. 1010.) Made a public act.

"Sec. 1. That (the persons named) and their successors in office are hereby constituted *a body politic and corporate*, under *the name and style of* 'The Aledo Collegiate Institute,' to be *located at* the Town of Aledo, in the County of Mercer, in the State of Illinois, *and by that name and style to remain and to have* perpetual succession, withpower to sue and be sued," etc.

"An Act to incorporate the Henry Female Seminary, in Marshall County, Illinois." (Private Laws of 1857, p. 1063.) Made a public act.

"Sec. 1. That (the persons named) be and are hereby constituted *a body politic and corporate*, known by *the name and style of* 'Board of Trustees of the Perpetual Fund for the Tuition of Indigent Youth, in Henry Female Seminary,' *located near* Henry, Marshall County, Illinois, *with power to sue and be sued;* to acquire, hold, sell and transfer both real and personal property by any and all usual modes as individuals may or can do."

1859.

"An Act to incorporate the Ewing Female University." (Private Laws of 1859, p. 363.) Made a public act.

"Sec. 1. That the trustees and proprietors of the Ewing Female University in the City of Knoxville, Knox County, Illinois, are hereby constituted *a body corporate and politic* by *the name of* 'The Ewing Female University,' *located* and always to remain at the said City of Knoxville, *for the purpose of promoting* collegiate and academic female education."

1865.

"An Act to incorporate the Mount Zion Male and Female Seminary." (Private Laws of 1865, Vol. 1, p. 25.)

"Sec. 1. That (the persons named) and their successors in office are hereby constituted *a body politic and corporate*, under *the name and style of* 'The Mount Zion Male and Female Seminary,' to be *located* at Mount Zion, in the County of Macon and State of Illinois, *and by that name and style to remain and have* perpetual succession, with power to sue."

JOHN J. HERRICK,
DAVID FALES,
Attorneys for Plaintiff in Error.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1902.

THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL SEMINARY, *Plaintiff in Error,* vs. THE PEOPLE OF THE STATE OF ILLINOIS, ex relatione SAMUEL B. RAYMOND, County Treasurer and ex officio County Collector of Cook County, Illinois, *Defendant in Error.*	No. 140.
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REPLY FOR PLAINTIFF IN ERROR.

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THE GUNTHORP-WARREN PRINTING CO., 118 RANDOLPH ST., CHICAGO.

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REPLY FOR PLAINTIFF IN ERROR.

The two questions presented in the Brief for Defendant in Error are *First*, as to the jurisdiction of this court, and *Second*, as to the proper construction of the exemption provision in the charter of plaintiff in error.

I.

THIS COURT HAS JURISDICTION TO REVIEW THE JUDGMENTS OF THE STATE COURT.

The jurisdiction of the court is denied on two grounds:

First. That *one* of the grounds for the judgment of the state court is *res adjudicata*, and that this is not a federal question. (Brief, p. 8.)

Second. That the exemption provision in the revenue act of 1872, under which the taxes in question were levied, was identical, as to the exemptions provided for, with the revenue act of 1845, the act in force at the date of the charter, and that, therefore, the state court did not give effect to a *new rule* of exemption in sustaining the tax, and for that reason the court has no jurisdiction. (Brief, p. 13.)

1. The contention that one of the grounds for the judgment of the State Court is res adjudicata, and that this is not a federal question.

The ground of this contention is that, in the cases before the court, the decision in 174 Ill. was held by the State Supreme Court (as is claimed) to be a final judgment, and, therefore, *res adjudicata*.

As to No. 265, neither the judgment of the County Court, nor the judgment of the State Supreme Court, nor the opinion of the State Supreme Court in the case in 174 Ill., was in evidence, or was even mentioned in the record.

The sole question presented by the record, or passed upon by the state court in that case (No. 265), was the federal question, whether the subsequent revenue law of 1872, and the action of the state officers under it, in levying the tax,

impaired the obligation of the exemption provision in the charter of plaintiff in error.

It is true that the opinion of the State Supreme Court in the record (No. 265. Pr. Rec., 30) shows that while the court directly passed on the federal question, holding that the particular property was not within the exemption provision, and that, therefore, the tax was valid, it also cited its previous decisions in *People ex rel.* v. *Chicago Theological Seminary*, 174 Ill., 177, and in *Chicago Theological Seminary* v. *People*, 189 Ill., 439 (No. 140), and said that "those cases are decisive of this."

It is manifest, however, that these previous reported decisions were referred to, and could only be referred to by the court, as binding on it under the doctrine of *stare decisis*, and not as *res adjudicata*.

In fact, the entire argument of counsel on this point is based on passages from the opinion in No. 140, quoted at length in their brief, which had reference to the facts as to the opinion in 174 Ill., shown only in the record in No. 140.

It follows that in No. 265, even on the theory of counsel, the sole question presented is the federal question as to whether the subsequent act of 1872, and the action of the state officers under it, impaired the obligation of the contract in the charter of plaintiff in error, and that question is, therefore, admittedly before the court for determination in that case.

And whatever may be the decision on the question of jurisdiction in No. 140, the decision and judgment which this court shall render in No. 265 on the federal question, being the decision of the court of last resort, will be final and therefore binding on the state court in all subsequent proceedings.

The question, therefore, as to whether the previous opinion in 174 Ill., was held to be *res adjudicata* by the State Supreme Court as *one* of the grounds of its decision, and whether this should affect the jurisdiction of this court, only arises in case No. 140, and is only material as affecting the judgment in that case, which was for the particular taxes for the year 1899.

(1) As pointed out in our original brief, the only judgment rendered by the State Supreme Court in 174 Ill. (assuming that the opinion, which is the only evidence in the record, is a *judgment*), was that the judgment of the County Court, which was in favor of plaintiff in error, be "reversed and the cause remanded for further proceedings in accordance with the views herein (in the opinion) expressed." (174 Ill., 183.)

As the authorities cited show, and as counsel concede, this decision, treating it, for the purpose of the question, as a judgment, was not a *final* judgment, to review which plaintiff in error could sue out a writ of error to this court.

This is forcibly illustrated by the fact that the State, by its subsequent failure to redocket the case in the court below within the two years required by the Illinois statute, *abandoned the entire proceeding*, and there never has been, and never can be, any judgment for the particular taxes, the sole object of the proceeding against plaintiff in error. (Brief for Plff. in error, p. 43.)

The claim of counsel, therefore, comes to this; that the State Supreme Court, by holding that a former decision by it, in a case in which there was no final judgment reviewable in this court, was binding on *it* as *res adjudicata*, in the cases before the court, has deprived this court of jurisdiction to review its decision of the federal question which

it is admitted is presented to this court for decision for the first time in the cases now before it.

If, by the action of the State in not further prosecuting the proceeding in 174 Ill., whereby, by force of the statutory provision, *it was abandoned and at an end*, the decision in 174 Ill. is now final and binding on this court, it would always be in the power of the state court to defeat the jurisdiction of this court to review its decision of a federal question, in any subsequent case which might involve the same question, by remanding the first case for further proceedings in conformity with the opinion.

(2) It is said, however, by counsel, that in the case in 174 Ill., "neither in the County Court, nor in the Supreme Court was it ever intimated that any federal question was involved. Such a question was not raised by the parties and, therefore, under no circumstances could that case have ever been brought to this court for review." (Brief, p. 8.)

While the record in the case in 174 Ill., was not in evidence in No. 140, and for that reason is not before the court, enough appears in the facts stipulated to show that the precise federal question, which is admittedly involved in the two cases before the court, was in fact directly involved and therefore directly passed on by the state court in that case.

The theory of counsel seems to be that, because it does not affirmatively appear that in the case in 174 Ill. the plaintiff in error *expressly set up and claimed* the benefit of the federal Constitution, and the State Supreme Court placed its decision sustaining the tax against the particular property *on the construction of the charter*, therefore there was no federal question, and for that reason the case could not have been brought to this court for review.

While we do not concede that the claim was not in fact expressly set up in the case, it is a sufficient answer to counsel that it was not necessary that this should appear in order to give this court jurisdiction to review the case.

It is settled by numerous decisions of this court that in the cases which arise under the second clause of the provision (Rev. Stat., Sec. 709) which defines the jurisdiction of this court to review the judgments of state courts—cases in which is drawn in question the validity of a statute of a state on the ground that it is repugnant to the Constitution of the United States—this court has jurisdiction if the facts in the record show that the validity of a state statute under the constitution of the United States was necessarily drawn in question and the decision of the state court was in favor of its validity, and that it is not necessary that the federal question be set up or claimed.

Yazoo & Mississippi V. Ry. Co. v. *Adams*, 180 U. S. 14, and cases cited.

Columbia Water Pipe Co. v. *Columbia Electric Ry. Co.*, 172 U. S., 475, 488.

And the fact that the State Supreme Court did not expressly refer to the contract clause of the constitution, does not prevent this court taking jurisdiction, if the application of such clause was necessarily involved in the decision.

Id.

It appears from the very opinion of the state court relied on (174 Ill., 177), that the particular judgment of the County Court was for the taxes for the year 1896; that in defense the plaintiff in error set up and relied on its charter, and that the state officers in levying the tax, and the court in rendering the judgment, acted under the sup-

posed authority and in enforcement of the subsequent law of 1872. (See, also, No. 140, Pr. Rec., 41–43.)

It thus appears that the federal question was in fact involved in the case in 174 Ill., and that the Supreme Court of Illinois in its decision in effect passed on that question, and that, therefore, if there had been a *final judgment* in the case this court would have had jurisdiction to review the decision.

See, also, brief for plaintiff in error (pp. 37-38), and cases cited.

(3.) As stated in our original brief (pp. 41–46), two grounds of defense were set up by the objections filed in No. 140, presenting these two questions:

First: The federal question, whether the subsequent law under which the taxes for which judgment was asked were levied impaired the obligation of the charter of plaintiff in error, which involved the question of the construction of the charter provision.

Second: The question whether *the former judgments in the County Court* in favor of plaintiff in error were *res adjudicata* of the question of construction.

It will be seen that even if the state court decided the *second* question, which arose on the affirmative defense of the former judgments of the County Court, against plaintiff in error, the *first* —the federal question—would still remain and must be decided in favor of the defendant in error before it would be entitled to judgment for the taxes.

There is no dispute that the State Supreme Court in its opinion in No. 140 directly considered and passed on this federal question. (No. 140, Pr. Rec., 54.)

The contention, however, is that in No. 140 the Supreme

Court also put its decision giving judgment in favor of the state on the ground that its former decision in 174 Ill., 177, as shown in the opinion referred to in the record, was *res adjudicata* of the question of construction of the charter provision.

Counsel say: "*One of* the grounds of the judgment of the state court is *res adjudicata* and *this is not a Federal question.*" (Brief, 8.)

As appears from the very cases cited by counsel to sustain this contention, it must be shown from the record that the independent ground of decision, which it is claimed did not involve a federal question, was broad enough *of itself* to sustain the judgment of the State Court, and, *also*, either that it was made by the State Court one of the *express* grounds of its decision sustaining the judgment, or that it was a good and valid one.

Klinger v. *Missouri*, 13 Wall., 257 at 263.
Bacon v. *Texas*, 163 U. S., at 227.
Rutland R. R. Co. v. *Central Vermont R. R. Co.*, 159 U. S., 630.
Beaupre v. *Noyes*, 138 U. S., 397.

In the first place we contend that the language quoted by counsel from the opinion in No. 140, and on which they base this contention, was used in that part of the opinion in which the court considered and passed on the *affirmative* defense made by plaintiff in error that *the former judgments of the County Court in its favor* were *res adjudicata* of the question, and after it had disposed of and decided the federal question adversely to plaintiff in error.

The precise point on which the court was passing in the part of the opinion quoted from by counsel, and which

followed this express ruling on the federal question, is thus stated in the opinion (No. 140, Pr. Rec., 54):

"*Second.* It appears that in each year for a number of years prior to 1897 appellant objected to the entry of judgment for general taxes in the County Court against certain of its lands, upon the alleged ground that said lands were exempt from taxation. * * * The contention now made in the present case is *that the judgments so rendered by the County Court in these former years in its favor* sustaining the objections so made by it are in the nature of estoppels, and constitute a *res judicata against the prosecution of the present proceeding.*"

Following this the opinion proceeds to consider the particular objection (see No. 140, Pr. Rec., 55 to 62) and holds on different grounds that it should not be sustained.

The third ground of its conclusion that the *former judgments of the County Court* were not *res adjudicata* in favor of plaintiff in error is thus stated: "But we are *inclined* to hold that under the circumstances above detailed the *last* judgment, which is the judgment rendered by this court, is the *controlling* one. * * * Inasmuch as appellant did not set up such former recoveries as a defence (in 174 Ill.) the adjudication made against it by this court *is a bar to its right to claim under such former judgments as estoppels.*" (Pr. Rec., 57)

It was in the course of its reasoning (No. 140, Pr. Rec. 61–62) in support of this particular ground of its decision, on the question whether the former judgments *in favor of plaintiff in error* were *res adjudicata* and therefore a valid defense, that the court used the language quoted by counsel.

Following its reasoning in support of this ground of its decision of the particular question, the court states its conclusion thus (No 140, Pr. Rec., 62):

"Our *conclusion* upon *this branch of the case* (the objection that the former judgments of the County Court in favor of plaintiff in error were *res adjudicata*) is that the judgment of reversal rendered by this court operated as a bar and complete defense *against the previous judgments rendered by the County Court and relied upon by the appellants herein.*"

It thus appears from the opinion of the state court that it was not *one* of the grounds of its decision—that the state was entitled to judgment nothwithstanding the exemption provision—that the decision in 174 Ill., was *res adjudicata* of the question of construction, but that the language quoted by counsel was only used in the course of the reasoning of the court in that part of the opinion which had reference solely to the particular *affirmative* defense, *that the former judgments of the County Court were res adjudicata in favor of plaintiff in error.*

This construction of the opinion is confirmed by the certificate of the Chief Justice of the State Supreme Court. (No. 140, Pr. Rec. 67.)

(4) If, however, it is assumed that in the language quoted the state court intended to hold, as stated by counsel, that the decision in 174 Ill. was *res adjudicata* on the question of "the construction of the exemption clause of the charter," counsel is in error in the contention that this establishes that the State Supreme Court in so doing *based its decision on a ground that did not involve the decision of the federal question.*

We have already seen, and it is conceded by counsel, that where it is sought to levy a tax under a subsequent law on property exempted by a charter provision, a ruling of the state court giving judgment in favor of the state is necessarily a decision of the federal question, *notwithstand-*

ing it places its decision wholly on the ground that under its construction of the contract the particular property was not exempt from taxation.

It being well settled that a decision that the property was not exempt under the charter provision is a decision of the federal question, the only effect of counsel's contention is that the court in its opinion placed its decision of the federal question on two grounds, *first*, on the ground that the decision in 174 Ill. was binding on it as a former decision of the question of construction under the rule of *stare decisis*, and *second*, on the ground that the judgment in 174 Ill. was *res adjudicata* of the question.

This federal question is now before this court in another case, (No. 140) and its jurisdiction to determine it admittedly is not affected by the fact that the state court put its decision of the question on the particular ground of the construction of the charter, the determination of which was involved, as this court holds, in the decision of the federal question.

This being so, whether the state court based its decision of the question of construction on the ground that its former ruling in 174 Ill. was binding on it as *stare decisis*, or on the ground that the decision in that case was *res adjudicata*, or both, the question must be determined in this court as an original question wholly irrespective of the grounds or reasons of the state court's decision.

That the former decision of the question of construction by the State Supreme Court in 174 Ill. is not binding on this court under the doctrine of *stare decisis* is conceded by counsel.

The question, therefore, is whether the former judg-

ment of the State Supreme Court in 174 Ill. is binding on this court as *res adjudicata*.

It is submitted that this is not a question as to the jurisdiction of the court, but as to the effect to be given by this court *in the exercise of its jurisdiction* to this prior decision of the state court.

This is in effect recognized by counsel in their contention that this court, in deciding the question of construction, is bound by the ruling of the state court in its opinion in No. 140 (as claimed by counsel) that the former decision in 174 Ill. is *res adjudicata*. (Brief, pp. 19–20.)

The question as to the binding effect of this decision of the state court will therefore be considered by us in that part of this reply in which we discuss the question of construction. (See *infra*, Point II.)

(5.) The only *facts* as to the case in 174 Ill. shown in the record in No. 140, were that the court in that case "filed the opinion," "as set forth *in* 174 *Ill.*, at p. 177," and *the date* it was filed, and that at the time of the trial, which was more than two years after the filing of the opinion, the case had not been redocketed in the trial court and had therefore been *abandoned*. The *judgment*, if any, entered by the State Supreme Court in pursuance of its *opinion*, *was not given in evidence or otherwise referred to in the record* as would have been necessary even to present the claim that the former *judgment* in the case was *res adjudicata* as to the question.

That the *opinion* of a court of review is not itself a final judgment, and that the fact that there was a final judgment cannot be shown from an examination of the *opinion*, but that this must appear from the *judgment*

actually entered, was expressly held by the Supreme Court of Illinois in the following cases:

Anderson v. *Fruitt*, 108 Ill., 378.
Harzfeld v. *Converse*, 105 Ill., 534.

In the above cases, the court, in holding that there was no *final* judgment of the Appellate Court of the State, expressly held that it could not look into the *opinion* of the court for the purpose of determining whether there was a final judgment, but that this must be determined from the judgment or order actually entered.

'So, also, neither the verdict of a jury nor the finding of a court, not followed by a final judgment based on the verdict or finding, is *res adjudicata*.

Springer v. *Bien*, 128 N. Y., 99.

So, even an order directing a final judgment, but on which no final judgment has been entered, is not *res adjudicata*.

Bouldin v. *Phelps*, 30 Fed. R., 548, 578.

(6) This court has expressly held in two cases that the decision of a State Supreme Court in which it passes on questions in the case, but reverses and remands it without directing that a particular judgment be entered, is not *res adjudicata*, on the questions passed on in the opinion, in another suit in the Federal court on the same cause of action.

Gardner v. *M. C. R. R. Co.*, 150 U. S., 349.
Bucher v. *Cheshire R. R. Co.*, 125 U. S., 555, 578.

See, also, to the same effect,

Union Bank of Richmond, Va., v. *Board of Commrs. of Oxford*, 90 Fed. R., 70.
Hooper v. *Atlanta, K. & N. Ry. Co.*, 65 S. W. Rep. (Tenn.), 405.

In *Bucher* v. *Cheshire R. R. Co., supra*, the plaintiff recovered judgment in the state court, and the highest appellate court of the state, reviewing the case, decided the points of law involved in it, set aside the judgment and sent the case back for a new trial. The plaintiff thereupon took a nonsuit and brought a new suit in the Circuit Court of the United States on the same cause of action.

This court held that the opinion of the State Supreme Court was not *res adjudicata* on the questions of law.

On this point, the court, MILLER, J. delivering the opinion, said, p. 578:

"It (the decision of the State Supreme Court) is not a matter of estoppel which bound the parties in the court below, because there was *no judgment entered in the case in which the ruling of the state court was made*, and we do not place the correctness of the determination of the Circuit Court in refusing to permit this question to go to the jury on the ground that it was a point decided between the parties, and, therefore, *res adjudicata* as between them in the present action."

In *Gardner* v. *M. C. R. R. Co., supra*, the above case was followed and the above language quoted with approval.

In fact the Supreme Court of Illinois has expressly held in different cases—none of which are referred to as overruled or modified by it in its opinion in No. 140—that a decision of a court of review remanding a case for further proceedings in conformity with the opinion is not a *final* judgment.

Such was the express ruling of the State Supreme Court in *City of Paxton* v. *Bogardus*, 188 Ill., 72, in which a judgment of the trial court, confirming a special assessment, was reversed and remanded by the State Supreme Court, " for further proceedings *in accordance with the*

views expressed in the opinion filed in this cause," (the precise language of the opinion in 174 Ill.).

The court say:

"The petitioner was entitled to *another* trial after its former judgment was reversed by this court and the cause remanded for further proceedings. While such further proceedings must be in accordance with the principles announced in the opinion filed on the former appeal, still, *as the former judgment was annulled and set aside and the cause was remanded for further proceedings, the petitioner is entitled to another trial before a final judgment can be rendered against it.* No directions were given by this court *to dismiss the petition* . . *to enter judgment of any kind* against the petitioner, but only for *further proceedings* conforming to the legal principles stated in the opinion. Such further proceedings in such a case *implied another trial.*"

In *Grant* v. *Bennett*, 96 Ill., 513, it was held that even a decision of the State Supreme Court, settling the rights of the parties, but reversing and remanding the case, with directions as to the decree to be entered (*Rockafellow* v. *Newcomb*, 57 Ill., 186), was not a *final* judgment, so as to become a lien or divest title.

The same court has also held that a decision by the State Appellate Court reversing and remanding a case for further proceedings in conformity with the opinion, although binding on the Appellate Court, on a second appeal (*Middeke* v. *Balder*, 98 Ill. App., 525), is not binding on the Supreme Court on such appeal *for the reason that it is not a final judgment.*

Board of Trade v. *Nelson*, 162 Ill., 431, 437.
Linnington v. *Strong*, 111 Ill., 152, 159.

In *Board of Trade* v. *Nelson*, *supra*, which was a proceeding for mandamus, the court say (p. 437):

"The judgment of the Appellate Court on that appeal merely reversed the judgment of the Superior Court and remanded the cause to that court for further proceedings *not inconsistent with the opinion of the Appellate Court. This direction was no more than the law requires of the trial court in every case. There was no order to do any specific thing. Such a judgment is not final*, and does not conclude the parties in this court. No appeal could be taken from the former judgment."

The ruling of the State Supreme Court so far as it sustains the view that the judgment in 174 Ill. was final, was based wholly on the supposed authority of previous cases decided by it which are cited in the opinion.

An examination of the prior cases cited in the opinion will show that they were all cases in which the effect of a previous decision, reversing and remanding the case for proceedings in conformity with the opinion, *arose on a second appeal in the same case*, and the court held that, as to the points of law decided in the previous opinion, the former decision was final and binding on the court.

As this court pointed out in the case of *Great Western Telegraph Co.* v. *Burnham*, 162 U. S., 339, there is a clear distinction between cases in which the effect of such a decision on a subsequent appeal of *the same case* is involved and cases in which the question is presented as to whether it is a *final* judgment.

A reference to the decisions of the very court, the Supreme Court of Illinois, shows that its decisions, holding that a former decision reversing and remanding a case is binding on a second appeal as to the particular question decided in the previous opinion, are not based on the ground that the previous decision was a *final* judgment, but on wholly different grounds.

Thus in *Smythe* v. *Neff*, 123 Ill., 314, the court holds such a decision binding under the doctrine of *stare decisis*.

(7) Counsel say (Brief, 13):

"If plaintiff in error had considered that the decision in 174 Ill. was not a *final* adjudication of the questions involved, there is no reason why it could not have filed the mandate of reversal and obtained a judgment in the County Court in conformity with the mandate and then have brought *that judgment* to this court *for the review* of any alleged federal question."

The claim here made is, in effect, that it was incumbent on the defendant against whose property judgment was sought, not only to redocket the case, but *to apply to the court* to render a judgment in favor of the state *and against itself*.

The sole object of the proceeding was to obtain a judgment for the particular taxes against the property of plaintiff in error.

Suppose that the plaintiff in error had redocketed the case. It was not the moving party and it had no right, much less was it incumbent on it to apply to the court to render judgment in favor of the state and *against itself*, which would become a lien on its property.

The plaintiff in error could not conduct the proceedings *for the state*, and if the state did not choose to itself prosecute the case (and its failure to file the mandate shows it did not intend to) it had a right to dismiss the proceeding by taking a non-suit.

The proceedings being at law, under the decision of the Supreme Court remanding the case to the trial court for further proceedings, a new trial was necessary.

See *City of Paxton* v. *Bogardus*, 188 Ill., 72, and other cases cited, *supra*.

Under the well settled law of Illinois the state had a right to take a nonsuit at any time before the trial, and it would have been error for the court to proceed to trial after a motion for a nonsuit.

Gordon v. *Goodell*, 34 Ill., 429.
Howe v. *Harroun*, 17 Ill., 494.
Adams v. *Shepard*, 24 Ill., 464.
Stanton v. *Kinsey*, 151 Ill., 301.

And where the plaintiff fails to prosecute his suit, the defendant is not entitled to demand a trial and judgment, but his only right is to have the suit dismissed at the plaintiff's costs, for want of prosecution, as in case of nonsuit.

Buena Vista Freestone Co. v. *Parrish*, 34 W. Va., 652, and authorities cited.
Felts v. *Delaware & Lackawanna R. R. Co.*, 170 Pa. St., 432.
Glaspie v. *Keator*, 44 Minn., 448.
Delano v. *Bennett*, 61 Ill., 83, at 85.

And the fact that the opinion of the Supreme Court remanding the case, would be binding in subsequent proceedings in the same case, as to the question of law decided by it, did not deprive the State, in whose favor the decision was made, of its right to take a nonsuit.

Hooper v. *Atlanta K. & N. Ry. Co.*, 65 So. W. R., 465.
Gordon v. *Goodell*, 34 Ill., 429.

In fact, the failure of the state to file the mandate within the two years required by the statute, thereby abandoning the proceeding, was in legal effect the same as a nonsuit, which is regarded in law as "an *abandonment* of the suit."

Holmes v. *C. & A. R. R. Co.*, 94 Ill., 439.
6 Enc. Pl. & Pr., p. 908.

Such a judgment of nonsuit would not be *res adjudicata*, or a bar to a new suit.

Homer v. *Brown*, 16 How., 354.
Manhattan Life Ins. Co. v. *Broughton*, 109 U. S., 121, at 124.
McCloskey v. *McCormick*, 44 Ill., 336.
Rudolph v. *German Mutual Fire Ins. Co.*, 71 Ill., 190.
L. E. & W. Ry. Co. v. *Sellman*, 51 Ill. App., 617.

In fact, even if plaintiff in error could have "*obtained* a judgment in the County Court in conformity with the mandate" "*that* judgment" could not have been taken to this court for review, as counsel erroneously assume.

Such was the express decision of this court in *Great Western Telegraph Co.* v. *Burnham*, 162 U. S., 339. As decided in that case, the only remedy, in case of such a judgment by the trial court, is to appeal from that judgment to the State Supreme Court, and, in the event of an affirmance by that court of the judgment, to sue out a writ of error to this court to review the judgment of the Supreme Court.

The very fact that, as was held in the same case, on the appeal from the second judgment of the County Court in conformity with the mandate, the State Supreme Court would have been bound by its former decision in the case, and that this court would not be, further illustrates the fact that the decision in 174 Ill. was not a final adjudication in the sense of a former judgment binding on this court.

2. The contention that the revenue act in force at the date of the charter was the same as the revenue act adopted after the date of the charter and under which the taxes in question were levied, and that therefore this court has no jurisdiction.

It is not controverted by counsel, but in effect conceded that, as this court has many times held, where taxes are levied on property claimed to be within the exemption provision of a charter, under the supposed authority of a subsequent act of the legislature, a federal question is necessarily involved, and this court therefore has jurisdiction, *notwithstanding the State Supreme Court based its decision wholly on the ground that under its construction of the exemption provision the particular property was not exempt from taxation.*

(See cases cited in brief for plaintiff in error, page 38.)

This being the well-settled law, the contention of counsel cannot be sustained.

(1) It is not claimed by counsel that the previous revenue act, that of 1845, was in the same language as the subsequent act of 1872, under which the taxes were levied. On the contrary, the exemption provisions of the two laws are in wholly different language. (See brief for defendant in error, p. 15.) The claim, however, is that the exemption provision of the previous law *as construed by the State Supreme Court* was the same *in effect* as that of the act of 1872. (Brief, p. 16.)

The contention, therefore, is that somehow, if it can be shown that the revenue act in force at the date of the charter, although wholly different in language, *is the same in effect* as the subsequent law under which the taxes are levied and enforced, this court is thereby deprived of the jurisdiction which it would otherwise have to review the decision of the State Supreme Court.

In fact the prior revenue act of 1845, quoted by counsel, was not only different in language but also different in substance from the subsequent act of 1872. One of the exemptions contained in the provisions which followed the language quoted by counsel, "subject to the exemptions *hereinafter stated*," was the following (Rev. Stats. of Ill., 1845, p. 437):

"All property which is, or may be exempt from taxation *by special law*."

When, therefore, the charter of plaintiff in error was adopted, this property became exempt to the extent of the exemption provision in the charter by the terms, not only of the charter itself, but of the general revenue act in force at the time.

In the subsequent revenue act of 1872 (brief for plaintiff in error, p. 8), no exception whatever was made, as in the former act, of property, "exempt from taxation *by special law*," but it was provided in express terms that "*all real and personal property* in this state," "except so much thereof as may be *in this act* exempted," "*shall* be assessed and taxed."

And it was under the supposed authority of this act, which in its terms covered the property in question, that the particular taxes in question were levied by the state officers, and the judgments of the state court were rendered.

(2) The precise question as to taxes levied under the same revenue act of 1872 on property claimed to be exempt under a charter provision passed at the same session of the legislature as that of plaintiff in error (the session of 1855) arose, and was decided adversely to the contention of defendant in error in *University* v. *People*, 99 U. S., 390.

It appears from the full report of the briefs of counsel for

the state in that case (the defendant in error in the cases before the court) that the following contentions were made (see pp. 315–317).

"The revenue law passed in 1872 is a *mere revision of* that of 1853, and makes *no substantial changes* therein so far as respects the question of the exemption of property from taxation. (Quoting the statutory provisions.)

Cases cited by counsel for plaintiff in error, where there was an actual attempt by subsequent legislation, or the adoption of a new constitution, to amend or repeal former special charters, are inapplicable to the cases presented by this record. * * *

In this case it neither appears from the record, nor otherwise, that the decision of the state court was based upon, or in any manner affected by, any law of the state passed subsequently to the making of the supposed contract, or that any such claim was ever made in that court by counsel on either side."

The court, referring to these contentions (Mr. Justice MILLER, delivering the opinion) says (pp. 319–320):

"The argument is that the judgment of the state court is *limited to a construction of* the fourth clause of the amendatory charter of 1855 (the exemption provision), as it is affected by the constitution under which it was enacted, and that whether that statute was a contract or not, or *whether it was properly construed or not*, it is still but the decision of a court *construing a contract or a statute*, and there is *no law* of the state impairing the obligation of that contract, within the meaning of the constitution of the United States."

The court, after referring to the general revenue act in force prior to the charter and quoting the provisions of the constitution of 1870, and of the revenue act of 1872, (quoted in our brief, p. 8), says (p. 320):

"It was under this law the local officers proceeded in assessing plaintiff's land for taxation, and it was *their construction of the law* which was sustained by the Supreme Court. If, therefore, the legislation of 1855 was a contract which exempted the property in question from taxation, and *by the law of* 1872, *as construed by the Supreme Court*, it is held

liable to taxation, it is manifest that it is the *law of* 1872 and the constitution of 1870 which impairs the obligation of that contract, however the court, *by an erroneous construction of that contract*, may be led to hold otherwise. * * * But if it (the charter provision) is a contract, as is contended for by plaintiff's counsel, which, under a true construction of the constitution of 1848, exempts all the property of plaintiff which is held by it for appropriation to the purposes of the University as a school, as an institution for teaching, and which is held for no other purpose whatever, * * * *then the law of* 1872 *and the constitution of* 1870 do, to the extent of the difference arising from these two constructions, impair the obligation of the contract of 1855. Whether that contract is such as to be impaired by these later laws is one of the questions of which this court always has jurisdiction."

In *Yazoo R. R. Co.* v. *Thomas*, 132 U. S., 174, the same question arose and the same ruling was made by this court.

The court, Mr. Chief Justice FULLER delivering the opinion, says:

"The taxes in question were assessed under the act of 1888, and, if the charter of the company, which became a law on the 17th of February, 1882, inhibited such taxation, then this court has jurisdiction to re-examine the conclusion reached. * * * The result is the same, *although the act of* 1888 *be regarded as simply putting in force revenue laws existing at the date of the company's charter*, rather than itself imposing taxes, for, if the contract existed those laws became inoperative, and would be reinstated by the act of 1888. The motion to dismiss the writ of error is, therefore, overruled."

See, also,

Asylum v. *New Orleans*, 105 U. S., 362.

(3) The entire contention of counsel is based on an erroneous view of *St. Paul, Minneapolis and Manitoba Railroad Co.* v. *Todd County*, 142 U. S., 282, which is quoted at length.

As to this case, it will be noted, in the first place, that the court nowhere expresses the intention to overrule or modify, and does not even refer to either of the two cases cited, *supra*, in which, as we have seen, the precise point now made was passed on, (*University* v. *People*, 99 U. S., 309, and *Yazoo R. R. Co.* v. *Thomas*, 132 U. S., 174), although the opinion was delivered by Mr. Chief Justice FULLER, who also delivered the opinion in *Yazoo R. R. Co.* v. *Thomas*.

That there was in fact no intention to overrule those cases, or to change the ruling made by them, also clearly appears from facts of the case.

In that case the charter of the railroad company, passed in 1857, provided for an annual payment of 3 per cent. of the gross earnings of the company, "in lieu of all taxes and assessments whatever," and that in consideration of such payments "the said company shall be forever exempted from all assessments and taxes whatever." The revenue act in force at the date of the levy of the taxes provided "that *railroad, insurance and telegraph companies* shall be taxed in such manner as *now is* or may hereafter be fixed by law." The only law providing for the taxation of the property of railroad companies was the revenue act passed in 1855 and in force *at the date of the charter*. The constitution of 1857 (the year in which the charter was adopted) expressly provided that "*all* laws now in force (including the acts referred to) *shall remain in force.*"

It thus appears that the taxes in question in the particular case were levied under an act *in force at and prior to the date of the charter and not under any subsequent act of the legislature*. Under these facts this court held that it was without jurisdiction.

That such was the effect of the decision in *St. Paul, Minneapolis & Manitoba R. R. Co.* v. *Todd County*, was expressly held in the subsequent case of *Wilmington & Weldon Railroad Co.* v. *Alsbrook*, 146 U. S., 279.

In that case it was claimed that certain property was exempt from taxation under the charter of the railroad company, and that for that reason a tax levied under the authority of a subsequent law of the state was invalid as impairing the obligation of the contract. It was contended by counsel for defendant in error, among other things, that "the decision of the state court is based on the *construction of the contract itself*. It concedes its validity but denies that a certain class of property is within its terms. Hence the writ of error should be dismissed. *St. Paul, Minneapolis, etc., Railway* v. *Todd County*, 142 U. S., 282."

The court, Mr. Chief Justice FULLER, who also wrote the opinion in *St. Paul, Minneapolis, etc. Ry. Co.* v. *Todd County*, delivering the opinion, says:

"The jurisdiction of this court is questioned upon the ground that the decision of the Supreme Court of North Carolina *conceded the validity of the contract of exemption* contained in the act of 1834, but *denied that particular property was embraced by its terms;* and that, therefore, such decision did not involve a Federal question.

In arriving at its conclusions, however, the state court *gave effect to the revenue law of* 1891, and held that the contract did not confer the right of exemption *from its operation*. If it did, its obligation was impaired *by the subsequent law*, and as the inquiry whether it did or not was necessarily directly passed upon, we are of opinion that the writ of error was properly allowed.

We do not regard * * * *St. Paul, Minneapo etc., Railway Co.* v. *Todd County*, 142 U. S., 282, cited by defendant in error, *as qualifying the rule upon this subject.* * * *

In *St. Paul, Minneapolis, etc., Railway Co.* v. *Todd County*, certain lands were considered by the State Court as not within the exemption claimed *under the revenue law existing at its date.*

But in the case at hand the court passed upon the action of the authorities *in virtue of a legislative act approved more than fifty years after the making of the supposed contract, and explicity upheld the law.*"

See, also, the following later cases to the same effect.

McCullough v. *Virginia*, 172 U. S., 102, 117.

Water Power Co. v. *Street Ry. Co.*, 172 U. S., 475, 487.

Houston & Texas Central R. R. Co. v. *Texas*, 177 U. S., 66, 77.

II.

THE PROVISION OF THE CHARTER OF PLAINTIFF IN ERROR EXEMPTED FROM TAXATION THE PROPERTY IN QUESTION, AND, FOR THAT REASON, THE LAW UNDER WHICH THE TAXES WERE LEVIED IMPAIRED THE OBLIGATION OF THE CONTRACT AND THE JUDGMENT SHOULD, THEREFORE, BE REVERSED.

Two contentions are made by counsel: (1) that the decision of the State Supreme Court in 174 Ill. is *res adjudicata* on the question of the construction of the charter provision, and binding on this court as such, and (2) that if the decision in 174 Ill. is not *res adjudicata*, the property in question is not within the exemption provision.

1. The decision of the State Supreme Court in 174 Ill. is not binding on this court as res adjudicata on the question of construction.

On page 19 of their brief, counsel contend that the decision of the Supreme Court of Illinois in 174 Ill., 177, giving a con-

struction to the charter provision, is *res adjudicata* of the question in this court.

As we have seen, neither the judgment nor the opinion in 174 Ill. is in evidence, or anywhere mentioned, in the record in No. 265, except that the court in its opinion refers to the reported decision. In any view, therefore, the contention can only apply to No. 140.

As to No. 140:

(1.) As we have also already shown, the *judgment* of the State Supreme Court in 174 Ill. is not in evidence. The only facts shown in the record in the case (No. 140) are the stipulation that the *opinion* reported in 174 Ill. was filed, and that no mandate to the trial court was ever issued by the Supreme Court (No. 140, Pr. Rec. 43). That such an *opinion* is not a final judgment, but that the fact that the judgment of the court was a *final* judgment, must appear from the judgment actually entered, and cannot be shown by the *opinion*, see the cases decided by the Supreme Court of Illinois and the other cases cited, *supra*.

(2) It is argued by counsel that the judgment of the State Supreme Court in 174 Ill. is a final judgment, on the ground that the State Supreme Court so held in No. 140, and that in so deciding the State Supreme Court decided "as to the meaning of the state practice act," and for that reason its decision should be conclusive.

But, as we have seen, the decision of the federal question by this court, in the exercise of its appellate and revisory jurisdiction, involves the decision by it of the question as to proper construction of the exemption provision.

And the question, whether the former decision of the state court in 174 Ill., as to the proper construction of the

provision, is binding on this court as *res adjudicata*, is a question not of local law, but of general law.

It follows that the question, whether the decision in 174 Ill. is *res adjudicata* as to the proper construction of the charter provision, is a question which this court will determine for itself as a question of general law, and irrespective of the opinion of the State Supreme Court, except as the grounds and reasons of that opinion may commend themselves to the court.

(3) Even in the view contended for by counsel, that the judgment in 174 Ill. is before the court as part of the record, this judgment is not *res adjudicata* and therefore binding on this court as a decision of the federal question, for different reasons.

First. It is fundamental that a former judgment to be *res adjudicata* in another proceeding must be a *final* judgment. The only judgment in 174 Ill., was a judgment reversing the former judgment, and remanding the case to the lower court for a new trial in accordance with the opinion. The fact that the State Supreme Court in the opinion reversing the former judgment decided a question of law which might be controlling on the new trial, and that on such new trial that decision would be binding on the trial court as to the particular question decided, did not make this judgment a *final* judgment.

That it was not a *final* judgment entitling the appellant to sue out a writ of error to this court is clear.

For the same and in fact stronger reasons it is clear that such a judgment of reversal and remand for a new trial in a case at law, whatever the views expressed on the questions of law which might arise, and whatever the effect to be given the opinion in a subsequent trial in the same case,

would not be pleadable as a former judgment in another suit or proceeding.

See authorities cited, *supra*.

It is submitted that there is neither reason nor authority in support of the position that the decision of an appellate court reversing and remanding a cause for a new trial in conformity with the opinion, however material the questions of law decided in the opinion may be on the new trial, is a final judgment pleadable as *res adjudicata* in another case.

And that such is not the law is shown by the express decisions of this and other courts cited *supra*.

Second. In addition to the fact that the judgment of the State Supreme Court only reversed and remanded the case for a new trial, in conformity with the views expressed in the opinion, the record shows that the state, the moving party in the proceeding, took no further steps in the case, either to file a remanding order or re-docket the case, and that by reason of its failure to do this for two years, under the express provision of the statute of the state, *the entire proceeding was abandoned.*

As a result of this action of the state, there was not only no final judgment in the case but the entire suit was completely at an end, as if the state, the case having been re-docketed, had taken a voluntary non-suit. The mere fact that, as the State Supreme Court has held, the effect of such abandonment of the particular proceeding was to leave the state free to commence a new proceeding (*Koon* v. *Nichols*, 85 Ill., 155) shows conclusively that the particular proceeding *was at an end.*

In fact the State Supreme Court in its opinion in the very case (No. 140, Pr. Rec., 62) held that the effect of the failuer

of the state to file the mandate and redocket the case was that "the *particular* suit shall be considered as *abandoned* and *no further action* shall be had therein."

It would be indeed an anomaly in law to hold that the judgment of reversal granting a new trial, in a proceeding which subsequently was terminated by the voluntary action of the moving party, was a final judgment, and *res adjudicata* in another proceeding.

That such is not the law see cases cited *supra*.

Third. A final and conclusive reason against treating the proceeding as *res adjudicata* in this court is that, because the judgment of the State Supreme Court was not final, the plaintiff in error had no right to a writ of error to bring the case to this court, the court of last resort, to have the decision of the federal question in the opinion reviewed.

Nor was there any subsequent judgment in the case which gave it any right to such review in this court, but on the contrary, the state subsequently wholly abandoned the proceeding, and it was thereby so completely at an end that there was not only no judgment, but no possibility of a judgment which would entitle the plaintiff in error to have the decision reviewed in this court.

The claim, therefore, that the decision of the State Supreme Court in 174 Ill. is *res adjudicata* of the federal question in No. 140, is in effect the manifestly untenable one that the *decision* of a federal question by a state court, which resulted in no final judgment reviewable here, is binding on this court as *res adjudicata* of the federal question, in another suit in which there was a final judgment and in which this court therefore has jurisdiction for the first time to review the decision of the state court.

See, also, *supra*, and the authorities there cited.

2. The construction given by counsel to the exemption provision is erroneous.

The question of construction depends on the meaning to be given to the word "seminary" in the exemption provision.

The view adopted by the State Supreme Court as to the meaning of this word in the provision, is wholly abandoned by counsel for defendant in error, and a meaning wholly different from, and, in fact, inconsistent with that meaning is attempted to be given it.

The State Supreme Court say (174 Ill., at p. 182):

"The second section of the charter mentioning *certain* PROPERTY to be *located* in or near the City of Chicago, and which is denominated 'the seminary,' we think the words in the fifth section, 'said seminary' refer to that *particular* PROPERTY."

The meaning of this language is clear and unmistakable—that the court construes the word "seminary," as used in section 2, and again in section 5, the exemption provision, as referring to *the school buildings*, which was the only "property" which could by any possibility be referred to as "the seminary."

The view adopted by the State Supreme Court in 174 Ill., that this was the particular meaning which the legislature intended the word should have in the exemption provision, was re-affirmed by the court in its two subsequent decisions in 189 Ill. (No. 140), and 193 Ill. (No. 265).

In our former argument, we have shown, as we believe conclusively, that giving to the word "seminary" in section 5 this meaning, involves giving to the entire provision a construction which would be so unreasonable and would, in fact, lead to such absurd results that it could never have been intended by the legislature. (Brief, pp. 69–73.) And that this view of the state court can not be sustained for other reasons, see our former brief, (pp. 47–97.)

That we were correct in this position is, in effect, conceded by counsel by their entire abandonment of the view, thus expressed and maintained by the State Supreme Court in its three different decisions, and their attempt to give to it another meaning, not only wholly different from, but in fact, inconsistent with, the meaning given it by the state court.

Their contention is that the words "said seminary" should be given neither the meaning contended for by plaintiff in error—the educational institution referred to in the title and in other provisions of the act, and which it was the declared object of the act to incorporate—nor that adopted by the State Supreme Court—the school buildings—but a third and wholly different meaning.

The precise meaning which counsel intend to give to the word is nowhere clearly defined by them, but that it is wholly different from that adopted by the State Supreme Court, "the particular *property*" referred to, as the court assumes, in section 2—the school buildings—is clear.

Counsel say:

"It (the exemption clause) will exempt all property owned by the corporation which is a part of or connected with *the school*, which the corporation has located and is *maintaining* in the City of Chicago." (p. 7.)

"The only reasonable construction is to confine the meaning of the word *seminary* to *the school established* in the City of Chicago." (p. 28.)

"The word *seminary* means *the school* or place of learning which the corporation has located and *is maintaining* in the City of Chicago." (p. 31.)

It thus appears, that "the school" referred to was something which had a continuous existence—something which was "*established*" in the first instance (p. 28), and afterwards "always *maintained*" (p. 25). It was also a "school" which had officers, professors and teachers (p. 26).

The entire reasoning of counsel on the question of construction is based on two erroneous assumptions. *First*, that, notwithstanding plaintiff in error is a charitable corporation and there is an express provision in its charter that "this act" be "construed liberally in all courts," the same rule of strict construction should be applied as if the exemption was in the charter of a railroad or other corporation for *private* profit which contained no such provision; and *second*, an erroneous assumption as to the effect of the rule of strict construction.

Proceeding on these erroneous assumptions, the theory of counsel seems to be that, under the rule of strict construction, it is only necessary to find *some* possible definition of the word "seminary" which will narrow its meaning to fit their construction, and that the meaning thus arrived at should be adopted, unless it results in an absurdity. (Brief, p. 29.)

But manifestly, the question is not as to the possible meaning which the word "seminary" *may have*, but as to the meaning the legislature intended the words "*said* seminary," in the particular provision, should have.

And the authorities cited in our original brief (pp. 87–89), show that, even when the rule of strict construction applies, the primary question still is, What was the *intention* of the legislature in using the language it did?

Nor does the rule of strict construction exclude the application of the other rules of construction in ascertaining this intention. (Brief, pp. 85–89.)

It is a fundamental rule that, in giving construction to a statute, it should be construed so as best to promote and effectuate the policy and object of the act.

In *U. S.* v. *Hartwell*, 6 Wall., 384, this court, SWAYNE, J., referring to the rule of strict construction, says (p. 395):

"The object in construing penal, as well as other statutes, is to ascertain the *legislative intent. That* constitutes the law. * * * It must not be defeated by a forced and overstrict construction. * * * The proper course in all cases is to adopt that sense of the words *which best harmonizes with the context and promotes in the fullest manner* THE POLICY AND OBJECTS OF THE LEGISLATURE."

And all the authorities agree that, notwithstanding the general rule of strict construction, an exemption provision in the charter of a charitable corporation should be construed, not narrowly, but in a fair and liberal sense, so as to promote the charitable objects for which the corporation was formed. (Brief for plaintiff in error, pp. 78–81, and authorities cited.)

In the particular charter before the court, the legislature itself declared the rule of construction which should be applied, in order to give full effect to the charitable and beneficial purpose of the act, by the express provision of section 6, that the act "*shall be construed liberally in all courts* for the purposes therein expressed." (See Brief, pp. 81–85.)

The policy and purpose of provisions of exemption in the charters of such charitable corporations are very clearly and forcibly expressed in two well-known cases decided by this court.

In *Home of the Friendless* v. *Rouse*, 8 Wall., 430, the court, in giving construction to an exemption provision in the charter of the Home of the Friendless, Mr. Justice DAVIS delivering the opinion, say:

"The purposes to be attained by such a charity are usually beyond the ability of individual effort, and require an association of persons who will themselves contribute pecuniary aid, and are willing to become solicitors for the contributions of others. Usually the initiation of such an enterprise

is in the hands of a few persons who need to be clothed with more than ordinary powers in order to obtain the successful co-operation of others. *In no way could this co-operation be better secured than by conferring on the corporators the authority to say to the benevolent people of St. Louis that their donations in money or lands, for the relief of the suffering female poor of the city, would be held by the institution undiminished by taxation.*"

In *Washington University* v. *Rouse*, 8 Wall., 439, argued and decided at the same time with the *Home of the Friendless* v. *Rouse*, *supra*, the court, Mr. Justice DAVIS delivering the opinion said (pp. 439-440):

"There are *no material points of difference* between the case just decided and this case, and the views presented in that case *are applicable to* this. The object of the charter in the one was to promote a charity, in the other *to encourage learning. Both were public objects of advantage to the country, and which every government is desirous of promoting.*"

The question, therefore, is: Reading this provision in the light of the manifest purpose of the act to promote by the grant of exemption from taxation the charitable object for which the institution of learning founded by the act was created, what was the legislative intention?

The plaintiff is purely a charitable corporation, and all its property, including the property on which the taxes in question were levied, represents donations presumably made on the faith of this provision of exemption from taxation.

Was it the intention of the legislature, in making this grant of exemption, that the donors to the institution should understand that all the property donated to promote its charitable object should be exempt from taxation, or that only the narrow and limited exemption of the seminary buildings and apparatus was intended?

The contention of counsel that the legislature intended to exempt only the property which was "part of or connected with" what they term the "school," as distinguished from the incorporated institution, cannot be sustained, for different reasons.

(1) As appears from the published reports of the cases (189 Ill., pp. 439 and 193 Ill., p. 619), the same counsel who appear for defendant in error also argued the case in the state court, and it is a fair inference that this third meaning which counsel now seeks to give to the word seminary is not presented by them for the first time in this court, but that it was also contended for by them in the State Supreme Court in the different cases decided by that court. We have, therefore, at the outset, the fact that the State Supreme Court, on consideration of the question in its three different decisions, rejected this meaning as not tenable, and therefore adopted as the basis of the construction contended for, the wholly different meaning—"the *particular property* referred to in section 2"—the school buildings.

(2) Counsel nowhere controvert the many authorities cited by us (Brief, pp. 76-77) which distinguish between an exemption from taxation in favor of corporations organized for private profit and charitable corporations such as plaintiff in error, and hold that such exemptions in favor of charitable corporations should be construed not narrowly but liberally, so as to promote the charitable object. On the contrary, all the statements of the rule of construction they claim should be applied, which are quoted by them, are taken from cases in which the rule was applied to corporations for private profit, railroad, insurance and banking corporations.

As to the express provision of section 6 of the charter of plaintiff in error, that it "shall be construed *liberally* in all courts," counsel do not controvert our construction of its meaning, and that it was the intention of the legislature that it should be applied in giving construction to the provision in question.

On the contrary, they in effect concede the correctness of our construction of the provision by apparently urging the manifestly untenable contention that this particular section *is not protected by the Federal Constitution,* etc., and that, therefore, this court, in giving a construction to the act, is bound by the construction the State Court gave to section 6, which we have shown would render it wholly meaningless. (Brief, p. 84.)

(3) Regarding the word "seminary" in the exemption provision—"*the* property, etc., *belonging* or appertaining to *said* seminary"—as used in the sense contended for by counsel, the "*school* of higher learning," as distinguished from the mere seminary buildings, the words "*said* seminary" in the exemption provision should be held to refer to the educational institution, "the school of higher learning," *incorporated by the act.*

The act was entitled "An Act *to incorporate* the Chicago Theological Seminary."

It was provided by section 2 that the object of the institution of learning which was incorporated by the act —the theological seminary—should be to furnish instruction and the means of education to young men preparing for the ministry. To promote this object this "seminary," which it was the declared purpose of the act "to incorporate," was given a corporate existence, and was endowed with the different corporate powers granted by the

charter—the power to hold and convey property, to have officers, to employ teachers, etc. All the property which it was authorized to acquire was to be held and used to promote the object declared in the charter. All the different powers with which, as a corporate body, it was endowed, were to be exercised in furtherance of this object. It had and could have no private purpose.

The words "the property," etc, "belonging or appertaining to said seminary," referred to some entity, and that an entity mentioned in the charter. In no proper and reasonable sense could "*the* property of every kind or description," be said to "*belong* or appertain to" the act of giving instruction—the function of teaching—a mere abstraction, which counsel term "the school."

The narrow meaning given to the word "seminary" by the State Supreme Court—the school buildings—being abandoned by counsel as not tenable, there is no entity mentioned in the act to which the words "*said* seminary" could refer, except the institution of learning—the Theological Seminary—which was given a corporate existence by the act, and the incorporation of which, with the powers and for the object provided, was the declared purpose of the charter.

The language and reasoning of the court in *County of Nobles* v. *Hamline University*, 46 Minn., 316, qnoted in our original brief, (p. 67) is peculiarly pertinent in this connection.

(4) The only definition which counsel attempt to give to the word seminary in the sense contended for, "the school," is the short definition quoted by them from Webster's Dictionary, "a place of education as *a school of high grade, an academy, college, or university.*"

It is submitted that there is nothing in this definition which excludes the idea of an incorporated institution. The general phrase "school of high grade" does not help to solve the question.

A reference, however, to the more specific definitions which are given of the words "university" and "college," given in the definition quoted by counsel as the synonyms of "seminary," make clear what is intended when the word seminary is used as it was in the exemption provision—"said seminary"—in reference to an incorporated institution.

In Webster's International Dictionary, from which the definition of "seminary" is quoted, the word "university" which is given as the synonym of seminary in the definition quoted by counsel, is thus defined:

"*An institution organized and incorporated* for the purpose of imparting instruction, examining students and otherwise promoting education in the higher branches of literature, science, art, etc., and empowered to confer degrees in the several arts and faculties, as in theology, law, medicine, music, etc."

Black's Law Dictionary, referring to the word "college" gives as its definition:

"In the most common use of the word it designates an institution of learning (*usually incorporated*), which offers instruction in the liberal arts and humanities and in scientific branches, but not in the technical arts or those studies preparatory to admission to the professions."

Rapalje & Lawrence's Law Dictionary gives as the definition of the same word "College":

"In American law, a college is *an institution of learning*, where youth are instructed in the higher branches. Colleges are *usually incorporated* and endowed, and enjoy certain privileges *granted them by charter*."

Under the title "Universities and Colleges," the American & English Encyc. of Law uses the following language (Vol. 27, p. 683):

"*Universities* and *colleges* may be founded wholly by the state, in which case they are *public corporations*, subject to control of the legislature; or they may be founded *by private donations*, aided or unaided pecuniarily by the government, when they are *private corporations* over which the legislature has no control save under the reservations in the charter or act of incorporation."

(5) It is not controverted by counsel that in construing a statute the words used are to be given their primary and ordinary meaning unless it appears from other provisions that a different meaning was intended.

Nor is it controverted that if the word "belong" in the exemption provision meant ownership, it is indisputable that the words "said seminary" referred to the incorporated institution.

In *Gammon* v. *Gammon*, 153 Ill., 41, cited in our original brief, the Supreme Court of Illinois expressly held that the primary and ordinary meaning of the word "belong" is that of ownership.

In the following cases cited in our original brief, the word "belong," occurring in a provision of exemption substantially the same as the provision in question, was held to mean ownership, and the corresponding words "seminary," "institution" and "asylum" were held to mean the institution incorporated by the act.

County of Nobles v. *Hamline University*, 46 Minn., 316.

Asylum v. *New Orleans*, 105 U. S., 362.

President & Faculty of St. Vincent's College v. *Schaeffer*, 104 Mo., 261.

See, also, to the same effect.

University v. *Skidmore*, 87 Tenn., 156.

Humphries v. *Little Sisters of the Poor*, 29 Oh. St., 201.

We have also shown in our original brief that in a number of other like charters, passed by the same legislature—one at the previous session and two at the same session—there were exemption provisions in the identical language, including the words "*belonging* or appertaining to," in which the word "belonging" was unmistakably used in the sense of *ownership*. (Brief, p. 95, Appendix, pp. 5–7.)

Where in the act do counsel find the evidence of the legislative intention to give to the word "belonging," in the provision "the *property*, etc., *belonging* or appertaining to said seminary," a different meaning as applied to property from its primary and ordinary meaning—that of *ownership*?

What language or provision of the act has been referred to as showing an intention that the word should be given a meaning so wholly different from this ordinary meaning, which it was held to have in substantially the same exemption provision in the five different cases cited, and which it clearly had in the charters referred to?

The only reason suggested by counsel is that the word *admits of* another meaning, and that because, as they assume, the words "said seminary" also admit of a different meaning from that of the incorporated institution, therefore "belonging to" means "part of, or connected with," and "said seminary" means "the school."

In fact the argument is the other way.

The primary and natural meaning of the word "belong"

being that of *ownership*, and there being nothing in the act showing that a contrary meaning was intended, this of itself shows that "*said* seminary" referred to the educational institution, which it was the express object of the act to incorporate and which was the only entity capable of owning property mentioned in the act.

(6) The constitution in force in Illinois at the date of the act, that of 1848, provided that "no private or local law which may be passed by the General Assembly, shall embrace more than one subject, *and that shall be expressed in the title.*" Under this provision the *title* was a part of the act.

Cohn v. *People*, 149 Ill., 492.

That where the title is thus made a part of the act, it may properly be referred to in ascertaining the intention of the legislature, is well settled. (Brief of plaintiff in error, p. 51.)

In our original brief, we referred to the title of the act in question, "An Act *to incorporate* the Chicago Theological Seminary," as containing the *first mention* of the seminary, to which the words "*said* seminary" in section 5 referred.

We contended that, reading the other provisions of the act in which the word "seminary" occurs, in connection with the clear expression of the *object* of the act in the title "*to incorporate* the Chicago Theological Seminary," the words "*said* seminary," in section 5, had unmistakable reference to the incorporated institution.

Counsel argue that the title of the act can never be resorted to to aid in ascertaining the legislative intention, unless the meaning of the act is doubtful, and that because of the rules of strict construction, which they apply, the fact that we refer to the title at all is fatal to our con-

struction, citing *Yazoo & M. Ry. Co.* v. *Thomas*, 132 U. S., 174, 188.

It will be seen that the effect of the argument is that the title to the act can never be resorted to as an aid in ascertaining the legislative intention where the rule of strict construction applies.

In addition to the fact that we deny that the rule of strict construction applies to the provision in question, as the purpose of all construction is to ascertain the legislative intention, and as the title of the act, when made a part of it as in this case, may be resorted to as an aid in ascertaining that intention, it is submitted that there is the same reason for resorting to the title of an act to which the rule of strict construction applies as to any other.

We concede that the title cannot be resorted to for the purpose of enlarging the provisions of the body of the act or for the purpose of changing the clear meaning of the language of those provisions.

It may, however, always be referred to as an aid in determining the intention of the legislature, and its language may have such relation to the particular provision, the intention of which is in question, as to be determinative.

That the title may be resorted to as an aid in arriving at the legislative intention in construing an act to which the rule of strict construction applies, as in any other case, is shown in the cases of *Coosaw Mining Co.* v. *South Carolina*, 144 U. S., 550, 562, and *Knowlton* v. *Moore*, 178 U. S., 41, 65, in both of which the court, in construing a penal statute, referred to the title as an aid in arriving at the intention of Congress.

In the case of *Yazoo & M. Ry. Co.* v. *Thomas*, 132 U. S., 174, the attempt of counsel was to enlarge the exemption provision by resorting to the language of the preamble.

The court only held that there was no ambiguity and that it would not look to the preamble to create one.

(7) Counsel do not controvert any of our statements as to the different legislative acts set out in the Appendix to our brief, and their consequent force, as illustrating the legislative intention in the provision in question.

Their sole contention is that the argument from these provisions "is offset" by the fact that, in the exemption provision in the charter of the Northwestern University, referred to in *University* v. *People*, 99 U. S., 309, the words "the corporation" were used. (Brief, p. 30.)

It should be noted, however, that this provision was in amendment to the original charter, and the same form of phrase used in so many other charters to express a *total* exemption as in the charter in question, the words "*said* seminary," "*said* institution," etc., were not for that reason appropriate.

The fact remains that it is indisputable, and not controverted by counsel, that in a number of different charters, two passed at the same session as the charter in question, exemption provisions *in the precise form* of the one in question were used in a connection *which left no room for any contention that anything but a total exemption was intended.* (Brief, pp. 94–96; Appendix, pp. 5–13.)

The fact also remains that the many provisions of the different charters quoted in the Appendix show that, when such *partial* exemption was provided as it is claimed was *intended* by the one in question, the legislature used and knew how to use the appropriate specific language. (Brief, pp. 91–93; Appendix, pp. 2–5.)

JOHN J. HERRICK,
DAVID FALES,
Attorneys for Plaintiff in Error.

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SUPREME COURT

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1902.

THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL SEMINARY, *Plaintiff in Error,* vs. THE PEOPLE OF THE STATE OF ILLINOIS, ex relatione SAMUEL B. RAYMOND, County Treasurer and ex officio County Collector of Cook County, Illinois, *Defendant in Error.*	No. 140.
THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL SEMINARY, *Plaintiff in Error,* vs. THE PEOPLE OF THE STATE OF ILLINOIS, ex relatione SAMUEL B. RAYMOND, County Treasurer and ex officio County Collector of Cook County, Illinois, *Defendant in Error.*	No. 265.

In Error to the Supreme Court of the State of Illinois.

PETITION FOR REHEARING.

JOHN J. HERRICK,
DAVID FALES,
Attorneys for Plaintiffs in Error.

THE GUNTHORP-WARREN PRINTING CO., 118 RANDOLPH ST., CHICAGO.

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PETITION FOR REHEARING.

To the Honorable the Justices of the Supreme Court of the United States:

The plaintiff in error, The Board of Trustees of the Chicago Theological Seminary, respectfully petitions the court to grant a rehearing in the above causes.

The opinion of the court proceeds largely on lines not pre-

sented by the brief for defendant in error, and therefore not discussed by us.

In view of this, and of the great importance to plaintiff in error of the decision, and of what we believe to be errors in the reasoning by which the court reaches its conclusion, and of the fact that three of the judges dissented and the majority opinion states that its conclusion to "adopt the views of the state court," and therefore affirm the judgment, was reached "with some hesitation," we respectfully ask a rehearing.

The undisputed facts show that for more than twenty years after the charter was granted, the total exemption claimed by plaintiff in error was not questioned, and that for nineteen years subsequently, during which, at intervals, taxes were levied on the property, the decision of the trial court in each year was that the exemption was total, and this decision was continuously acquiesced in by the state.

It was not until more than forty years after the charter was granted—the period after the grant of the charter and before the decision of the State Supreme Court in 174 Ill.—that any court decided that the exemption was partial.

The grounds on which the opinion reaches the conclusion that the property in question was not exempt from taxation, shortly stated, are:

(1) That the provision in Section 6 of the Act that "This *Act* * * * shall be *construed liberally in all courts* for the purposes therein expressed," does not apply to the provision for exemption from taxation (Section 5), and that therefore the same rule of strict construction should be applied as if there were no such provision requiring a liberal construction of "this Act" in the charter; and that for that reason, if there is "room for reasonable doubt whether a

total or only a partial exemption was meant, the partial exemption should alone be recognized."

(2) The opinion, after quoting at length from the opinion of the Supreme Court of Illinois (174 Ill.), which is based wholly on the rule of strict construction, and on what we claim to be an erroneous view of the meaning of that rule, says:

"We think there is *force* in this reasoning, and we are *disposed* to concur in *the result* arrived at."

(3) After stating that "the judges of the Supreme Court of Illinois have unanimously taken" the view that only a partial exemption was intended, the court say:

"*Great weight* ought also to be attached to the decision of a State court, regarding questions of taxation or exemption therefrom under *the constitution or laws* of its own State. * * * The decision of the State Court *is entitled to exercise marked influence upon the question this court is called upon to decide*, and where it cannot be said that the decision is *in itself unreasonable or in violation of the plain language of the statute*, we ought, in cases engendering a fair doubt, to follow the State court in *its interpretation of the statutes* of its own State."

The conclusion reached is thus stated in the concluding sentence of the opinion:

"We therefore *adopt*, though we admit *with some hesitation, the views of the State court*, which lead to an affirmance of the judgments."

Grounds on Which the Rehearing is Asked.

The petitioner respectfully asks a rehearing of the case on the following grounds:

1. The opinion of this court, affirming the judgment of the State Court, except so far as it quotes from the opinion

of the State Supreme Court in 174 Ill., is based on grounds not presented in the brief for defendant in error, and therefore, not considered in the briefs for plaintiff in error.

(1) This court holds that the provision of Section 6 of the charter of plaintiff in error, that "this act * * * shall be construed liberally in all courts for the purposes therein expressed," only applies to particular sections of the Act, and that it does not apply to the exemption provision in question—the immediately preceding section, Section 5—on the ground that the word "purposes" was synonymous with "the object" of the Act expressed in Section 2, and that Section 5 was not "in furtherance of" this "object."

First: This view of the provision was not presented in the opinion of the State Supreme Court, but, on the contrary, that court gave the wholly different construction to the provision, that it applied to *all* the provisions of the charter, including Section 5, but that the word "purposes" was synonymous with "intention," and that this intention must be *first* ascertained, and that the provision should only be applied in giving construction to the provision, *after* this "*intention*" had been thus ascertained.

This contention we showed in our brief was clearly erroneous, and would, in effect, nullify the provision.

Second: Nor was the construction given by this court to Section 6 presented in the brief of counsel for defendant in error. On the contrary, their sole contention was, that the construction given by the State Supreme Court was binding on this court for the reason that

"Provisions in the contract that the contract itself shall be construed, without reference to certain laws then in force, *are not such provisions as are within the protecting force*

of the Federal constitution, which prohibits a state from passing any law impairing the obligation of a contract." (Brief, 32.)

It will thus be seen that the plaintiff in error has had no opportunity to be heard against the construction given to Section 6 by this court, which, as will be more fully shown hereafter, was wholly different from, and in fact inconsistent with, the construction given to it both by the State Supreme Court and by counsel for defendant in error.

(2) The court holds that the decision of the State Court, giving the construction to the exemption provision which this court adopts, is entitled to "great weight" and should "exercise marked influence upon the question this court is called upon to decide," citing and quoting from *Wilson* v. *Standefer,* 184 U. S., 399, in support of this conclusion.

This view was nowhere presented in the brief of counsel for defendant in error, nor was the case which this court cites in support of it cited in their brief, and for that reason neither the case cited, nor the view which it is held to support, was considered in the briefs for plaintiff in error.

(3) The construction given in 174 Ill. to the words "said seminary" in the exemption provision, on the meaning given to which the entire question of construction of the exemption provision depends—that it refers to the "particular property" which it is assumed was mentioned in Section 2—the seminary buildings and grounds—was wholly abandoned in the brief for defendant in error, and the only claim made was that the word "seminary," as there used, was intended to have the wholly different meaning, "the *school established* in the City of Chicago" — "the *school* which the corporation is *maintaining*"—"the *school* of higher learning"—as dis-

tinguished from the mere seminary grounds and buildings, and *it was this new construction given to the provision which was discussed in our reply and there shown to be wholly untenable.*

2. The court is in error in holding that the provision of Section 6 of the charter, which provides that "this act" "shall be construed liberally in all courts," does not apply to the exemption provision (Section 5), and for that reason a rehearing should be granted.

(1) It is conceded in the opinion (see Point I, *infra*) that if Section 6 does apply to Section 5, this court's decision should be in favor of plaintiff in error.

(2) The provision in Section 6 is, that "*this Act*"—which manifestly means, and can only mean, *the whole* of the Act, not any particular part or section of it, but *all* of it, including Section 5—"shall be construed liberally in all courts for the purposes therein expressed." And in the opinion on file, this court expressly holds that Section 6 does apply to Section 4, which defines the powers of the board of directors. We insist (as shown more fully under Point I, *infra*) that there is no sound reason for this ruling, and that the distinction involved in the court's holding that Section 6 applies to Section 4, but not Section 5, is without foundation.

(3) The court's ruling on this point is in direct conflict with the ruling of the State Supreme Court, which expressly held that Section 6 did apply to Section 5, but, after making that ruling, nullified (as we showed in our former brief, and shall further point out again, *infra*) the effect of it, by construing the word "purposes" in Section 6 as synonymous with *intention*, and treating the language "the

purposes therein expressed," as refering to the *intention* of *each* provision.

This court's opinion on this point is also inconsistent with itself, for the reason that, in addition to giving its own reasons in support of its construction of Section 6, this court also quotes, and in effect adopts, the reasoning of the State Supreme Court, which gives to the provision a construction different from, and inconsistent with, that given to it by this court.

The reasons in support of the above grounds for rehearing are presented fully, *infra,* under Point I, for the reason that the questions to which they refer, and on which this court has ruled adversely to plaintiff in error, were not presented either by the opinions of the State Court or the brief for defendant in error, and were, therefore, not considered by us either in our briefs for defendant in error or in the oral argument.

3. The ruling of the court that, in the case before it, the decision of the State Supreme Court is entitled to "great weight," and should "exercise marked influence on the question" in this court, is erroneous.

(1) There is no sound basis in reason for this ruling, and it is in fact contrary to the clear meaning and manifest purpose of the provisions of the Constitution and the Judiciary Act, which confer on this court an appellate jurisdiction to review the final judgments of state courts, giving effect to laws claimed to be violative of the obligation of a contract.

(2) The court's ruling is not supported by the case cited in the opinion (*Wilson* v. *Standefer,* 184 U. S.), nor by any of the previous cases in this court on the same

subject, but, on the contrary, all of these cases are based on grounds and reasons which have no application to the case before court.

The reasons in support of the above grounds also are presented more fully, *infra*, under Point II, for the reason that the questions to which they refer and on which this court has ruled adversely were not presented either in the opinion of the State Court or in the brief for defendant in error, and were, therefore, not considered by us in the briefs for plaintiff in error or on the oral argument.

4. The reasoning of the opinion of the State Court in 174 Ill., which this court quotes and adopts as the sole basis of its decision, giving the same construction to the exemption provision which the State Court gave to it, is clearly erroneous, and results in giving to the words "said seminary" and "belonging to" in the provision a meaning which is wholly unreasonable and contrary to the manifest intention of the provision.

It is submitted, as is in effect conceded in the opinion of the court, that if the reasoning of the State Court's opinion —which is adopted and quoted by the court as the sole basis of its decision giving the same construction to the exemption provision which the State Court gave to it—is clearly erroneous, the grounds and reasons presented in support of the construction of plaintiff in error are such that it should be adopted by the court, and the judgment should therefore be reversed.

In any view, it is clear that if it is shown that the construction, given to the language of the provision by the State Court in its opinion, results in giving to it an unreasonable, and in fact absurd meaning, the construction should be rejected, and the judgment should, therefore, be reversed.

Aside from the ruling of the court considered *supra* and under Point II, *infra*,. that the decision of the State Court is entitled to "great weight," and should exercise marked influence upon the decision of the question this court is called upon to decide," the court in its opinion gives no reasons in support of the construction of the exemption provision it adopts (the construction given it by the State Court), or against the construction of the plaintiff in error, but bases its decision wholly on the reasoning of the opinion of the State Supreme Court from which it quotes.

Referring to the passage quoted from the State Court's opinion, which gives the entire reasoning of the opinion in support of its construction of the exemption provision, the court say:

"We think *there is force* in this reasoning and we *are disposed* to concur in the result arrived at,"

and the concluding language of the opinion is:

"We therefore adopt, though we admit with some hesitation, *the views of* the State Court which lead to an affirmance of the judgments."

(1) A fundamental ground, on which the entire reasoning of the State Court's opinion and also the opinion of this court is based, is, that the rules of strict construction as to exemption from taxation, which are stated at length in the State Court's opinion, should be applied in giving construction to the exemption provision.

As we have shown, *supra,* and under Point I, *infra,* this ruling involves holding, as held in the opinion of this court, that the express provision of Section 6, that "this *act* * * * should be *construed liberally in all courts* for the purposes therein expressed," does not apply to Section 5—the exemption provision.

We have contended, *supra*, that this ruling as to the meaning and application of Section 6 is erroneous, and if this position is sustained, it follows that the fundamental ground on which the entire reasoning, both of the opinion of the State Court and of the opinion of this court, rest, is taken away, and for that reason the construction based on it is erroneous and the judgment of the State Court should therefore be reversed.

(2) The entire reasoning of the State Court's opinion, on which its construction of the exemption provision adopted by this court is based, is quoted in the opinion of the court.

On reference to the language quoted, it will be seen that the ruling of the State Court, which narrows the exemption expressed in the broad general language of the provision to the partial exemption only of "the property *used in immediate connection with* the seminary," is based wholly on the words "said seminary" in Section 5, and the view that these words refer to "the particular *property*," which (as is assumed) is mentioned in Section 2 (the school buildings and grounds), and not to the incorporated institution.

The question, therefore, is: To what did the words "said seminary" in the exemption provision refer; to the *institution* incorporated by the act, or to the *place* where instruction was to be given—the school buildings and grounds?

Referring again to the language quoted from the State Court's opinion, it will be seen that the sole ground on which the State Court bases its construction of the provision is that, under the rule of strict construction, "if the language (of the provision) is *capable* of the broader *or* more restricted meaning, the latter *must* be adopted," and the opinion, therefore, holds, in effect, that although the word "seminary" indisputably refers to the incorporated institu-

tion in other parts of the act—(*a*) in the title, (*b*) in the corporate name, and (c) in Section 4—it is "capable of" a different meaning in Section 5—the meaning which it is assumed is given it in Section 2—the seminary grounds and buildings—and the word "belonging," is "capable of" a different meaning from its natural and ordinary meaning, that of *ownership* (153 Ill., 41), this different meaning of these words which gives to the provision the "more restricted meaning" "*must* be adopted."

It will be seen that this method of giving construction to the provision wholly eliminates any consideration of the question of the actual *intention* of the legislature. The necessary and logical result of giving this effect to the rule of strict construction is, that the question of the actual *intention* of the legislature is not only not involved, but is wholly aside from the question.

Hence, in the opinion in 174 Ill., quoted in the opinion of this court, the question of the actual *intention* of the legislature is not mentioned, or referred to, but, by the process of reasoning adopted, the rule of strict construction —giving it the effect which it is assumed it has—itself arbitrarily settles the question of construction.

So, in the majority opinion of this court, nothing is said as to the real question—the question as to the actual *intention* of the legislature in the language used.

Neither the opinion of the State Court, nor the opinion of this court, concludes that it was the *intention* of the legislature of Illinois, in the language used, to exempt only the seminary grounds and buildings, etc., but the reasoning and conclusion of the State Court's opinion (adopted by this court), is that, because the word "seminary" and the word "belonging" in Section 5 are "*capable* of a broader *or*

more restricted meaning, the latter *must* be adopted," and *therefore,* that the words "said seminary," as used in Section 5, refer to the seminary grounds and buildings, and not to the incorporated institution, mentioned in the title and other parts of the act.

The result also of giving this effect to the rule of strict construction is, not only to ignore the primary and fundamental question of the legislative intention as wholly aside from the question of construction, but all consideration of the context or other evidences of legislative intention, and thereby to decide the whole question of construction on the application of an arbitrary rule that because a word is "capable of" two meanings, the one broader and the other more restricted, "the *latter must be* adopted."

Hence, neither in the opinion of the State Court, nor in the majority opinion, is any reference made to any of the other provisions of the Act, in which the word "seminary" indisputably refers to the incorporated institution, nor to any of the other evidences that it was the legislative intention that it should have that meaning in Section 5 (the exemption provision) stated in our brief, and also forcibly presented in the dissenting opinion.

On the contrary, as we have seen, the opinion of the State Court, and as a consequence, the opinion of this court, which adopts its reasoning, are based solely on the assumed requirement of the rule of strict construction that, as the words "seminary" and "belonging" are "capable of" the two meanings, the one which is the more restricted "*must* be" adopted, and that *therefore,* the words "said seminary" should be construed as referring to the seminary grounds and buildings, and not to the incorporated institution.

It is submitted that this assumption of the State Court

as to the meaning of the rule of strict construction is wholly erroneous.

The authorities are uniform that the rule of strict construction which was applied does not in any way change or override the fundamental rule that the primary inquiry, in giving construction to language of a statute or a contract, is as to the *intention* of the legislature in using the language it did, nor the other and familiar and well-settled rule that where a word has two meanings, the natural and ordinary meaning should be adopted, in the absence of other provisions showing a contrary intention. (Brief, 87-89.)

U. S. v. *Hartwell*, 6 Wall., 385.
Meadowcroft v. *People*, 156 Ill., 356.

This fundamental error in the reasoning of the opinion of the State Supreme Court is nowhere considered in this court's opinion, but, on the contrary, the court itself falls into the same error by adopting, as the basis of its decision, the entire reasoning of the State Court's opinion.

(3) In our brief and argument (Brief, 51-67; Reply, 31-42) we have referred to the different provisions of the Act in which the word "seminary" is used in the sense in which we claim it was used in Section 5—as referring to the incorporated institution—and have stated different reasons, based on the particular language of the provision, the context and purpose of the Act, etc., as showing that it was the intention of the legislature, in using the words "said seminary" in the exemption provision, to refer to the incorporated institution.

The reasons in support of this view of the legislative intention are also forcibly and clearly stated in the dissenting

opinion of Mr. Justice WHITE, concurred in by Mr. Justice BROWN and Mr. Justice HOLMES.

None of these reasons are considered in the State Court's opinion or in the opinion of this court, which is based, as we have seen, wholly on the reasoning of that opinion.

On the contrary, there is no mention in either opinion of any of the different provisions in which the word "seminary" is indisputably used in the sense of the incorporated institution—in the title of the Act, in the corporate name and Section 4. There is no reference to any of the other provisions or the context relied on by us as showing that such was the legislative intention. No one of the reasons stated in support of the construction of plaintiff in error is even mentioned.

The other provisions of the Act, the context and the reasons in support of the construction of plaintiff in error, if present at all in the mind of the State Supreme Court, are wholly ignored by it, and the opinion proceeds wholly on the ground, as we have shown, that if the word "seminary," as used in Section 5, is "capable of" two meanings, the more restricted should be given to it, and therefore the words "said seminary," as used in Section 5, should be construed as referring to the seminary buildings and grounds, and not the incorporated institution.

We can only explain the entire absence of any reference to these reasons in the opinion of this court by the fact that, as the result of its ruling that "great weight" should be given to the State Court decision—that it should "exercise a marked influence on the question"—the court bases its decision affirming the judgment of the State Court on the view expressed that there is "much *force in the reasoning*" of the State Court's opinion—that its decision "is not *in itself*

unreasonable or in violation of the plain language of the statute"—and therefore its conclusion should be adopted.

(4) We have shown in our brief that if the meaning is given to the words "said seminary" and "belonging to" in the exemption provision which the State Supreme Court found it necessary to give to them to reach the conclusion it did in its opinion in 174 Ill. (the reasoning of which this court adopts), the result is that the provision is given a wholly unreasonable and, in fact, an absurd meaning. (Brief, 69-73.)

We have there shown that the State Supreme Court, in its opinion in 174 Ill., expressly gave to the words "said seminary" the meaning the "particular property," which (as it assumed) was "mentioned" in the preceding Section 2, as "the seminary"—the seminary buildings and grounds—and to the word "belonging" the meaning (using the language of the definition quoted and adopted in the opinion) "*connected with* a *principal* or *greater* thing; an *appendage;* an *appurtenance.*"

We have also shown that, substituting for the words used in Section 5, "said seminary" and "belonging to," the words which the State Supreme Court held expressed the meaning it was intended they should have, *only* the particular property "*connected with* the *principal* or *greater* thing—"appertaining *to*" "the particular property" (the seminary grounds and buildings) would be exempt.

The effect, therefore, of giving to the words "seminary" and "belonging" the meaning given them by the State Supreme Court is that "the *principal* or *greater* thing," "the particular *property*" referred to as "*said* seminary"—the seminary buildings and grounds—"with" which the property exempt is defined as "*connected*" as an "*appurtenance,*"

would not be exempt, but, on the contrary, would be *excluded from the exemption by the very language of the provision.*

We have also shown that, giving to the language of the provision the meaning thus given it by the State Supreme Court, would not only result in not exempting the very property which the State Supreme Court and this court held it was *intended to exempt*—the seminary grounds and buildings—but would also attribute to the legislature an absurd and unreasonable meaning which never could have been intended. See

Lau Ow Bew v. *U. S.*, 144 U. S., 47, 59.
People ex rel. Gaulter, 14 Ill., 39.

This view of the effect of the State Supreme Court's decision, from which we submit there is no escape, is also wholly unanswered in the opinion of this court or in the brief for defendant in error.

(5) We have also shown in our brief and argument that the decision of the State Supreme Court in both the cases before the court is based on a *construction of* its previous decision in 174 Ill., which gives to the exemption provision a meaning *wholly different from that given it by the same court in its opinion in* 171 *Ill., and one which it is impossible to derive from the words of the provision.* (Brief, 73-75.)

In No. 140 the court, referring to 174 Ill., 177, say (Pr. Rec., 54):

"In the latter case, 174 Ill., we hold that Sec. 5 of the Act of 1855, incorporating the appellant, * * * refers only to *property used in immediate connection with the seminary, and does not include other property* which may be owned, rented or held by the said seminary as an investment, *even though the income thereof is used solely for school purposes.* We are satisfied with the conclusions reached in *People* v. *Theological Seminary, supra.*"

The same *construction* of the decision in 174 Ill. is given in the opinion of the State Court in No. 265, and is in turn adopted by the court in its opinion.

We have shown in our brief (pp. 74-75) that, substituting for the words *actually* used in Section 5, the words which the State Court says in its opinions in the two cases before the court, express the meaning intended to be given them by the opinion in 174 Ill., the result is an *entirely new provision*, which it is impossible by any distortion of language to derive from the original Section 5, and which is wholly inconsistent with the meaning which the same court in its opinion in 174 Ill. gave the *language* of the provision.

We have also there shown, as illustrating this, that under the construction given by the State Supreme Court to the opinion in 174 Ill., in its opinions in the two cases before the court (and also in this court's opinion) the words "belonging or appertaining to" in the exemption provision are given the meaning "used in immediate connection with," a meaning which they do not have either in the definition adopted in 174 Ill. or in any definition given by any lexicographer,

This view of the construction given to the provision by the State Supreme Court, and which, we submit, demonstrates the error of that construction, is also wholly unanswered, either in the opinion of this court or in the brief for defendant in error.

(6) It is not controverted in the opinion of the State Court or in the opinion of this court, that in construing a statute the words used are to be given their primary and ordinary meaning unless it appears from other provisions that a different meaning was intended, and that if the

word "belong" in the exemption provision meant ownership, it is indisputable that the words "said seminary" referred to the incorporated institution.

In *Gammon* v. *Gammon,* 153 Ill., 41, cited in our original brief, the Supreme Court of Illinois expressly held that the primary and ordinary meaning of the word "belong" is that of ownership.

In the following cases cited in our original brief, the word "belong," occurring in a provision of exemption substantially the same as the provision in question, was held to mean ownership, and the corresponding words "seminary," "institution" and "asylum" were held to mean the institution incorporated by the act. (Brief, 65-69; 56.)

County of Nobles v. *Hamline University,* 46 Minn., 316.

Asylum v. *New Orleans,* 105 U. S., 362.

President & Faculty of St. Vincent's College v. *Schaeffer,* 104 Mo., 261.

See, also, to the same effect:

University v. *Skidmore,* 87 Tenn., 156.

Humphries v. *Little Sisters of the Poor,* 29 Oh. St., 201.

We have also shown in our original brief that in a number of other like charters, passed by the same legislature—one at the previous session and two at the same session—there were exemption provisions in the identical language, including the words "*belonging* or appertaining to," in which the word "belonging" was unmistakably used in the sense of *ownership.* (Brief, p. 95, Appendix, pp. 5-7.)

Where in the act does the court find the evidence of the legislative intention to give to the word "belonging," in the

provision "the *property*, etc., *belonging* or appertaining to said seminary," a different meaning as applied to property from its primary and ordinary meaning—that of *ownership*?

Neither in the opinion of the State Court nor in the opinion of this court, nor in the brief of counsel for defendant in error is any language or provision of the act referred to as showing an intention that the word should be given a meaning so wholly different from this ordinary meaning which it was held to have in substantially the same exemption provision in the five different cases cited, and which it indisputably had in the other charters referred to.

It follows that the primary and natural meaning of the word "belong" being that of *ownership*, and there being nothing in the Act showing that a contrary meaning was intended, this of itself shows that "*said* seminary" referred to the educational institution, which it was the express object of the Act to incorporate and which was the only entity capable of owning property mentioned in the act.

(7) We cited in our original brief the following adjudicated cases, in which like provisions were considered and it was held on grounds peculiarly pertinent to the cases before the court, that similar general words "belong to" and "the college," "the institution," "the asylum," etc., referred to the corporation created by the Act, and that all the property of the corporation was, therefore, exempt (Br., pp. 65-73):

Asylum v. *New Orleans*, 105 U. S., 362.

Nobles v. *Hamline University*, 46 Minn., 316.

President, etc., of St. Vincent's College v. *Schaefer*, 104 Mo., 261.

We also quoted at length from the two cases of *Asylum* v. *New Orleans,* 105 U. S., 362, and *County of Nobles* v. *Hamline University,* 46 Minn., 316, in both of which the exemption provisions were practically *identical in language* with the provision in question, except that in *Asylum* v. *New Orleans,* the words used were "the Asylum," and in *County of Nobles* v. *Hamline University,* "the institution," instead of "said seminary."

In *Asylum* v. *New Orleans* (105 U. S., 362), the exemption provision was as follows:

"That from and after the passage of this Act all the property, real and personal *belonging* to the Orphan Boys' *Asylum* of New Orleans, be and the same is hereby exempted from all taxes, either by the state, parish or city in which it is situated, any law to the contrary notwithstanding."

It thus appears that in the exemption provision in that case, there was the same use of the general word "asylum" which could refer to the incorporated institution, but was "capable of" a meaning which would refer to the "place," the "building and grounds," also known as the asylum, and of the word "belonging" which, in addition to its primary meaning, *ownership,* was *"capable* of" the different meaning, "connected with," etc., given to it in the opinion of the State Supreme Court.

The precise and only reasoning on which, as we have shown, the State Supreme Court based its decision giving to the provision in question the narrow and restricted meaning which it did, therefore applied to the exemption provision in that case.

The property on which the tax was levied was a cotton press owned by the corporation the income from which was applied to maintain the charity. The precise question

of construction involved in the cases before the court was thus directly presented, and was, in fact, expressly passed on in the case.

The court, Mr. Justice BRADLEY, say (pp. 365, 369):

"The language of the exemption is *so explicit and so broad* and comes in after so many allusions to property which it is supposed the corporation might acquire other than that which would be directly used for food and shelter to the destitute and helpless persons under its care, *that no doubt can be entertained as to its literal application to all the property of the Society which it would be lawful and proper for it to possess.* The funds on which it relies for carrying on its work, however invested, whether in stocks, real estate or otherwise, *less than the asylum building itself, are clearly embraced in the terms of the exemption, and to exclude them from its operation, would require the insertion or addition of words which the legislature did not see fit to express.* * * * *We think it difficult to conceive of a grant more clearly expressed than that in the present case.*"

It is true, that, in that case, the State Supreme Court did not base its decision on the ground of a construction of the exemption, but on the ground that under its construction of a general law of the state in force at the time the charter was adopted, there was a power reserved to the legislature to withdraw the exemption.

It appears, however, from the opinion, that the question of the proper construction of the exemption—whether it exempted *all* of the property of the corporation—was raised in this court and directly passed on by it.

There is, therefore, no ground for distinguishing the case from the case before the court, unless under the ruling of the court that on writ of error to review a judgment of a State Court the decision of the State Court is entitled to "great weight," etc., the decision of the State Court is held

to be controlling or not on the question of construction, according as it does—or does not—pass on that question.

In the *County of Nobles* v. *Hamline University,* the act was entitled "An Act to *incorporate* the Hamline University of Minnesota." The exemption provision, Section 11, provided:

"All corporate property *belonging to the institution,* both real and personal, is and shall be free from taxation."

Section 13 of the Act, which was identical with Section 6 of the Act in question, provided:

"This Act shall be *construed liberally in all courts* for the purposes herein expressed."

There was, therefore, in that case, the same use in the exemption provision of a general term "the institution" instead of the corporate name, and of the same words, "belonging to."

It was contended in that case, as in this, that the words "the institution" in the exemption provision, referred to the place and not to the corporation, and that, therefore, the exemption was limited to property directly used and occupied by the University.

The entire reasoning of the Supreme Court of Minnesota in holding that all the property of the corporation was exempt from taxation under the provision (pp. 317, 318) which is quoted in our brief, page 67, is peculiarly pertinent to the case before the court.

The court, in conclusion, say:

"*The institution* as distinguished from the corporation HAS NO BEING AND IS NOT CAPABLE OF OWNING PROPERTY. Had it been intended to limit the exemption to property directly used and occupied by the University DIFFERENT LANGUAGE WOULD HAVE BEEN USED."

Neither of these cases is distinguished or otherwise referred to in this court's opinion.

Not only this, but the absence of any reference to these cases in the opinion is emphasized by the fact that the court refers to and distinguishes the case of *University* v. *People*, 99 U. S., which *was not cited by us* on the question of construction, but *only on the question of jurisdiction*, saying:

"The case of *University* v. *People*, 99 U. S., 309, *is no authority for the construction contended for by the plaintiff in error.*"

The court then points out the difference between the language used in the exemption provision in that case and in the case before the court.

In fact, the case was cited by counsel for defendant in error, and in our reply brief, we showed that the provision in question in the particular case was an *amendment to the original charter*, and that for that reason the form of phrase used in the charter of plaintiff in error which was used by the same legislature in so many other charters (see appendix) to express a *total* exemption as in the charter in in question, the words "said seminary," "*said* institution," etc., was not appropriate. (Reply, p. 44.)

(8.) We also showed, in our original brief, that the construction of plaintiff in error was further decisively confirmed by the consideration of other similar charters passed by the same legislature at the same and other sessions. (Brief, p. 90-97; Reply, 44.)

That under the authorities cited by us these provisions in other charters passed by the same legislature at the same, and other sessions could properly be referred to as confirming our construction of the provision in question, is not controverted, either in the brief of counsel for defend-

ant in error or in the court's opinion. Nor is the reasoning by which it is shown that a reference to these provisions forcibly confirms our construction of the exemption provisions before the court anywhere controverted.

We submit the following reasons in support of the particular grounds above stated—which were not considered in the briefs filed by us, for the reason that they were not presented either in the opinion of the State Supreme Court or in the brief for defendant in error.

I.

THE COURT IS IN ERROR IN HOLDING THAT THE PROVISION OF SECTION 6 OF THE CHARTER, WHICH PROVIDES THAT "THIS ACT," "SHALL BE CONSTRUED LIBERALLY IN ALL COURTS," DOES NOT APPLY TO THE EXEMPTION PROVISION (SECTION 5), AND FOR THAT REASON A REHEARING SHOULD BE GRANTED.

Section 6 of the Act provides:

"Sec. 6. *This Act* to take effect and be in force from and after its passage, and *it* shall be deemed a public act *and shall be construed liberally in all courts,* for the purposes therein expressed."

If this provision applies to the exemption provision in question, Section 5, and for that reason the provision should be "*construed liberally in all courts,*" the entire fabric of the reasoning of the majority opinion, as well as of the opinion of the State Supreme Court, falls to the ground.

The entire reasoning of the majority opinion is based on the view that the rule of strict construction applies to the provision—that "a doubt is fatal to the claim"—and that because of this rule, as there is "room for *reasonable doubt*

whether a total or only a partial exemption was meant, a partial exemption should alone be recognized."

That if the provision of Section 6 should be applied, a different conclusion would follow in giving construction to the exemption provision (Section 5), is in effect conceded.

Referring to Section 4, the provision which defines the powers of the board of directors, and to which the opinion holds the provision of Section 6 applies, this language is used:

"Those powers (the powers given by Section 4) should be *liberally* construed *for the furtherance of the object stated in the charter. To do so would not violate any well-settled rule of construction,* and would nevertheless *be sufficient in case of doubt to turn the decision in favor of a construction more liberal in its nature than might otherwise be properly adopted.*"

It will be observed that by the express language of Section 6, "*it*"—"this *act*"—and not particular provisions of it, is to be "*construed liberally in all courts for the purposes therein expressed.*"

Referring to this provision the court say:

"The word 'purposes' in Section 6, is synonymous with the word 'object' in Section 2, as we think, and we find that the object or purpose is stated in Section 2, 'to furnish instruction and a means of education to young men preparing for the gospel ministry, and the institution shall be equally open to all denominations of Christians for this purpose.' It is *for the accomplishment of* this purpose or object that the *act* is to be liberally construed."

Referring to Section 4 (the section immediately preceding the provision in question), which defines the powers of the board of directors, the court say:

"In regard to the powers of the board of directors, as provided for in the charter, those powers should be liberally

construed *for the furtherance of the object stated* in the charter. To do so *would not violate any well-settled rule of construction,* and would, nevertheless, be sufficient in case of doubt to turn the decision in favor of a construction *more liberal* in its nature than might otherwise be properly adopted."

The opinion further holds that this Section, which it is thus expressly held should apply in giving construction to Section 4, should not be applied in giving construction to the immediately following section (Section 5), the exemption provision in question.

If, because of this express provision of Section 6, which, as we have seen, applies in terms to the entire "Act," and not to any particular provision of it, Section 4 is to be "liberally construed," "for the furtherance of the object stated in the charter," why should not Section 5 be so construed for the same purpose?

The language of Section 6 is not that Section 4, or any particular provision, shall be "liberally construed," but that "this *Act*," not any one provision of it, but all of its provisions, shall be "construed liberally in all courts."

The court holds that the "purposes therein expressed," for the furtherance of which the "act" is to be "liberally construed," are synonymous with the word "object" in Section 2—"to furnish instruction and *the means of* education to young men preparing for the gospel ministry," and that "it is *for the accomplishment of this purpose or object* that the act is to be liberally construed."

Basing its ruling on this construction of the language, the court holds that under the provision in question (Section 6), Section 4, which defines the powers of the board of directors, "should be *liberally construed,*" because the powers

granted by it are to be exercised "for the furtherance of the object stated in the charter."

On the other hand, the court holds, in effect, that the immediately following section (Section 5), which grants the exemption from taxation, is not within the provision of Section 6, for the reason that it is *not* "for the furtherance of the object stated in the charter."

On what theory is it held that a provision granting and defining the powers of a board of directors is "for the furtherance of the object stated in the charter,"—"for the accomplishment of this purpose or object"—and the provision exempting from taxation the property of the corporation, which could only be acquired, held or used to carry out and promote that object, is not?

On what theory is it held that a provision that the board of directors "shall have power" "to appoint an executive committee" and "such officers, professors and teachers as the government and instruction of the seminary may require," is a provision "for the furtherance of the object stated in the charter," and a provision exempting from taxation the property which, under the charter, could only be acquired by the donations, or proceeds of donations, made to promote the object of the corporation, and could only be held or used to promote that object, is not?

It is expressly stipulated in the cases before the court, as to all the property on which the taxes in question were levied, that "all the rentals and income" of the property are "used *for the object contemplated in the charter,*" and that "all said parcels and lots were bought by the objector, or given to the objector, *for the promotion of the object mentioned in the charter.*" (No. 140, Pr. Rec., 26; No. 265, Pr. Rec., 20.)

Does the exercise by the board of directors of power to appoint agents, professors, teachers, etc., promote the object stated—"to furnish instruction and the *means of* education"—any more directly than does the exemption from taxation of the property donated to the corporation for the sole purpose of promoting that object, and the income or proceeds of which is used, and can only be used, to pay the officers, teachers, professors, and otherwise aid in "furnishing *instruction* and the *means of* education?"

In *Home of the Friendless* v. *Rouse,* 8 Wall., 430, the court, referring to the effect of an exemption provision in the charter of the Home of the Friendless, Mr. Justice DAVIS delivering the opinion, say:

"The purposes to be attained by such a charity are usually beyond the ability of individual effort, and require an association of persons who will themselves contribute pecuniary aid, and are willing to become solicitors for the contributions of others. Usually the initiation of such an enterprise is in the hands of a few persons who need to be clothed with more than ordinary powers in order to obtain the successful co-operation of others. IN NO WAY COULD THIS CO-OPERATION BE BETTER SECURED *than by conferring on the corporators the authority to say to the benevolent people of St. Louis that their donations in money or lands, for the relief of the suffering female poor of the city, would be held by the institution undiminished by taxation.*"

In *Washington University* v. *Rouse,* 8 Wall., 439, argued and decided at the same time with the *Home of the Friendless* v. *Rouse, supra,* the court, referring to a like provision of exemption in the charter of the University (Mr. Justice DAVIS delivering the opinion), said (pp. 439, 440):

"There are *no material points of difference* between the case just decided and this case, and the views presented in that case *are applicable to* this. The *object* of the charter in the one was to promote a charity, in the other *to en-*

courage learning. Both were public objects of advantage to the country, and which every government is desirous of promoting."

Another apparent ground of distinction made by the court is that to apply the provision to Section 5 would be to give it the effect of changing "a canon of construction" which would otherwise apply to the provision—the rule of strict construction—and that such could not have been the intention of the legislature.

In holding that the provision applies to Section 4, the provision defining the powers of the board of directors, the opinion gives as the reason that "to do so *would not violate any well settled rule of construction.*"

In holding that the provision does not apply to the immediately following section, the one in question (Section 5), the court say:

"We do not think it was intended by the language of the sixth section to provide for a complete overthrow *of a canon of construction,* such as the one in question, which has obtained for so many years, and has been so universally and strictly adopted and adhered to by the courts of the whole country."

In other words, the reasoning of the opinion is, in effect, that the provision of Section 6, which, by its express language, applies to the entire "Act,"—which provides that "it" ("this *Act*") "shall be construed liberally in all courts," should be held not to apply to any provision which, in the absence of Section 6, *would be subject to the rule of strict construction.*

The effect of the ruling is that, there being these two opposing rules of construction—a rule of *liberal* construction and a rule of *strict* construction—the provision should not be applied to any section which, in the absence of an express

provision on the subject, would be subject to the established rule of strict construction.

This necessarily follows since, if, in the absence of Section 6, Section 4 would be subject to the rule of strict construction, which is as old as the law, there would be the same reason for not applying Section 6,—that to do so would "provide for a complete overthrow of a canon of construction, such as the one in question," that of strict construction.

If the provision of Section 6 as to the rule of construction to be applied was not intended to change some existing rule of construction which would otherwise apply, why was it inserted?

If it was intended that this provision should be limited to particular sections—should apply in giving construction to Section 4 and not in giving construction to the immediately following section (Section 5), why was it not so limited in terms?

If the provision of Section 6 applies to the provision of Section 4, granting and defining the powers of the board of directors, what reason can be suggested why it should not apply to the grant of power in Section 1, "to acquire, hold and have property, real and personal, etc."?

If this Section 6, which in terms applies to "this Act," applies to the grants contained in these different provisions, why should it not apply to the grant of exemption from taxation in Section 5? If it was intended to apply to all the other provisions of the Act except Section 5, as the opinion in effect holds, why was the general language, "this Act," used? Why was no exception made of this one particular section, to which it is held the provision does not apply?

In the opinion, the fact that the rule of strict construction,

which applies to exemptions from taxation, "has obtained for so many years, and has been so universally and strictly adopted and adhered to by the courts of the whole country," seems to be also regarded as a further reason why Section 6, notwithstanding its express language, should be held not to apply to Section 5.

(1) It is submitted that, if the fact that to apply Section 6 to the exemption provision would be "a complete overthrow of a canon of construction," as applied to the particular provision, is not a sufficient reason for limiting its plain language, the further fact that the rule "has obtained for so many years," or "has been universally adopted," clearly would not be.

(2) The provisions of the charter under consideration were adopted nearly fifty years ago, and the present condition of the law, which has largely grown up during that period, can afford no possible aid in arriving at their true construction.

(3) We submit that as applied to charitable corporations, which include educational institutions, as distinguished from corporations for profit, the rule of strict construction as to exemptions from taxation has not been "so universally and strictly adopted and adhered to by the courts of the whole country."

This is shown by the many cases cited in our brief (pp. 76-81), which hold that the reasons of the rule have no application to exemptions from taxation in the charters of charitable corporations, and that therefore the provisions in such charters should be liberally construed to further the charitable objects intended.

It may be that the very purpose of the provision was to settle the question which these authorities show might other-

wise have arisen, as to the rule of construction to be applied.

The provision is also to be read in the light of the settled policy of the state at the time the charter was passed and up to the time of the adoption of the new constitution of 1870, to favor and promote educational and other charitable institutions by liberal grants of exemption from taxation, as shown both by the provision of the constitution then in force and the many grants of similar exemptions from taxation to such institutions.

The statutes of the different states also show that such provisions, providing as to the rule of construction to be given to statutes, or particular statutes, are not uncommon in legislation, and that where they are adopted it is for the very purpose of changing some existing "canon of construction," which would otherwise be applied. In fact, they could have no other object.

See,

Commonwealth v. *Davis,* 12 Bush (Ky.), 240.
People v. *Soto,* 49 Cal., 67.
Hankins v. *People,* 106 Ill., 628.
Maxwell v. *People,* 158 Ill., 248.

The court, in connection with its consideration of Section 6, also quotes the language of the Supreme Court of Illinois in giving construction to the same provision.

On reference, however, to the language quoted, it will be seen that the Supreme Court of Illinois gives to the provision of Section 6 *a construction wholly different from and inconsistent with that adopted by the majority opinion.*

The Supreme Court of Illinois, after quoting the language of Section 6, say:

"We do not think this language was intended to or could

be held to change or qualify the general rules of construction applicable to the section under consideration.

Here the very question to be determined is, what is the *purpose* expressed in the section? And to say that liberal rules of construction must, under Section 6, be applied in favor of the contention that all property belonging or appertaining to the corporation is exempt, would be to beg the whole question. In determining what *purpose* is expressed in the section, resort must necessarily be had to the general rules for considering such laws. When that *purpose* is ascertained, liberal rules of construction, *if necessary,* are resorted to *to give effect to such purpose."*

It will be seen that the Supreme Court of Illinois here treats the provision of Section 6 *as applying in the same way to Section 5 as to any other provision of the charter,* and its ruling is therefore in direct conflict with the ruling of the majority opinion, that while this provision should be applied in giving construction to Sections 2 and 4, it *should not* be applied in giving construction to Section 5.

While, however, the Supreme Court of Illinois holds that the provision applies to Section 5 the same as to any other section, that court gives it a meaning which, as we have shown in our brief (pp. 83-85), wholly nullifies it by construing the word "purposes" in Section 6 as synonymous with *intention,* and treating the language, "the *purposes* therein expressed," as referring to the *intention* of *each* provision.

If Section 6 applies only after each *provision* has been construed, and the *purpose, i. e.,* the *intention,* has been ascertained by construction, what is there remaining to construe?

Take the provision in question (Section 5). If the rule of strict construction is to be *first applied* for the purpose of ascertaining its *intention,* for what *other purpose* can it be "construed liberally in all courts?"

There is no room for applying rules of construction except in ascertaining the *intention* of the provision, and when the *intention* is ascertained, there is no further occasion for construction.

In conclusion on this point, we quote the language of the dissenting opinion of Mr. Justice WHITE (concurred in by Mr. Justice BROWN and Mr. Justice HOLMES):

"I cannot conceive that the words of the statute, immediately following the section granting the exemption, commanding that the provisions of the contract 'shall be liberally construed in all courts for the purposes therein expressed,' should have what seems to me their plain meaning disregarded, by causing them to refer, not to the act as a whole, but to some particular provision in it. I find nothing in the language which lends itself to such a view."

II.

THE RULING OF THE COURT THAT IN THE CASES BEFORE IT THE DECISION OF THE STATE SUPREME COURT IS ENTITLED TO GREAT WEIGHT, AND SHOULD EXERCISE A MARKED INFLUENCE ON THE QUESTION IN THIS COURT, IS ERRONEOUS.

We shall consider this ruling (1) on reason and (2) on authority.

1. *There is no sound basis in reason for this ruling, and it is in fact contrary to the clear meaning and manifest purpose of the provisions of the Constitution and Judiciary Act, which confer on this court an appellate jurisdiction to review the final judgment of state courts giving effect to laws claimed to be violative of the obligation of a contract.*

The opinion of the court concedes that the exemption provision in the charter of plaintiff in error constitutes a contract between the State of Illinois and the plaintiff in error.

The sole question to be determined by the court is as to the proper *construction* of the particular charter provision.

If it is construed as granting a *total* exemption from taxation, the obligation of the contract is admittedly violated by the subsequent state law.

It has been decided in many cases that, in passing on the question of construction in such a case, this court must decide the question for itself, in the exercise of an independent judgment, and without reference to the decision made by the state court.

State Bank of Ohio v. *Knoop*, 16 How., 369.
Ohio Life Ins. & Trust Co. v. *Debolt*, 16 How., 41.
Jefferson Branch Bank v. *Skelley*, 1 Black, 43.
Delmas v. *Ins. Co.*, 14 Wall., 660.
Louisville Gas Co. v. *Citizens Gas Co.*, 115 U. S., 83.
Bryan v. *Board of Education*, 151 U. S., 39, 50.
Mobile & Ohio R. R. Co. v. *Tennessee*, 153 U. S., 48.
Douglass v. *Kentucky*, 168 U. S., 489.
Chicago, etc., R. R. Co. v. *Nebraska*, 170 U. S., 57.

We submit that to hold that the mere fact that *the very decision* of the state court, *which the court is reviewing in the exercise of its appellate jurisdiction*, was a particular way is entitled to "*great weight*," and should "exercise a *marked influence* upon the question," is in direct contradiction of the many clear and emphatic statements of the rule which this court has so many times held should govern in this class of cases.

It is a contradiction in terms to say that "great weight" should be attached to the mere fact that the decision of the state court was a particular way, and that because of this fact such decision "should exercise *a marked influence* on the question" in this court, and at the same time to say that it is the duty of the court to decide the question before it for decision "*independently of all adjudication* of the Supreme Court of the state" (1 Black, 436); "*to interpret for itself* the instrument relied on as the contract between the parties" (16 How., 416); "to decide *for ourselves, independently of the decision of the state court*" (109 U. S., 244); "*whatever may be the views or decisions of the state court in relation thereto*" (135 U. S., 662); "*upon our own judgment and independently of the adjudication of the state court*" (115 U. S., 683).

The sole question before the court is the question as to the proper construction of the exemption provision.

Under the many decisions of this court, cited *supra*, it is the duty of this court, exercising as it does an appellate and revisory jurisdiction, to decide this question for itself, and in the exercise of its independent judgment, and without reference to the decision made by the State Court, whose judgment is before it for review.

By the ruling of the court under consideration, there is added to the real, and, as we contend, the only, question involved—what, in the opinion of this court, in the exercise of its own independent judgment, was the legislative intention in the language used—the further question, whether *the decision of the State Court* "is *in itself* unreasonable, or in violation of the plain language of the statute."

Unless, in particular cases, a determining and controlling effect is to be given to the determination, by this court, of

this further and additional question as to whether *the State Court's decision* is "*in itself* unreasonable or in violation of the plain language of the statute," the consideration and determination of this question would be wholly meaningless.

On the other hand, if the determination of this question would be controlling in particular cases (as it necessarily must be in order to be material), it is submitted that the effect is *to introduce a wholly new test for determining whether the judgment of the State Court is erroneous, and one which is wholly inconsistent with the nature of the revisory jurisdiction vested in the court, and the duty imposed on it in the exercise of that jurisdiction.*

The question of construction involved in the cases before the court is the same question which would be before the court if the case was an appeal from a decree or judgment of a Federal Circuit Court or Court of Appeals, in a suit to prevent the threatened violation of the obligation of the contract by the enforcement of the tax levy or to recover back the amount of the tax paid, on the ground that the particular property was exempt from taxation under this provision, and in which the Federal court had based its decision on the same ground of construction—that the exemption provision did not cover the particular property.

In such a case, however, there could be no claim that any weight should be given by this court to the fact that the decision of the question by the Federal Court was a particular way.

In no view would the decision of that court have "great weight" or "exercise a marked influence on the decision of the question," or in any way affect or influence the decision

of the question by this court, except as the reasoning of the opinion of the lower court would be entitled to consideration.

The ruling of the majority opinion, therefore, presents this anomaly, that in case of a review of a decision by the Federal Circuit Court, or Court of Appeals, *of the same question of construction* of the particular provision, this court might decide the question of construction in favor of plaintiff in error —might give a favorable construction to the charter provision —with the same reasons and considerations for and against the construction before it, while in case of a writ of error to review the decision of the state court, because of the "great weight," the "marked influence" which it holds the decision of that court is entitled to, it would decide the same question of construction the other way.

In other words, *the mere fact that the writ of error is to review the judgment of the state Supreme Court, instead of the judgment of the Federal court, might be controlling in the particular case,* and therefore lead to a different and, in fact, opposite decision from that which would be rendered if the appeal was from the same judgment by the Federal court.

It follows that the effect of the ruling of the opinion is that the same question of construction, between the same parties, on the same arguments for and against the particular construction, would be decided by this court in the exercise of its independent judgment one way—in favor of the exemption—and another way—against the exemption—according as the revisory jurisdiction of this court should be invoked to review a judgment by the Federal court or to review a judgment of the State Supreme Court.

If "great weight" is to be given to the decision of the state court, if it is to have a "marked influence on the decision of the question," as the court holds, it follows that in a particu-

lar case this "great weight," this "marked influence," might turn the scale against the exemption claimed (and such in effect is the reasoning of the majority opinion), and there would, therefore, be a wholly different decision of the same question of construction by this court, in the exercise of its independent judgment, according as the court should be called upon to determine it on writ of error to review the judgment of a state court or on writ of error to review the decree or judgment of a Federal court.

Unless such would be its effect in a given case, the holding that this "great weight" should be given to the state court's decision, this "marked influence" should be exercised by it in the consideration of the question in this court, would be wholly foreign to the question before the court, and all that part of the opinion in which so much is said on the subject would be words and not substance.

We also submit that there is a manifest inconsistency between the position of the court in this case and the provisions of the federal constitution and the federal statutes with reference to the jurisdiction of Federal courts over cases involving federal questions.

If, as the court holds, the decision of the state court with reference to such a federal question as is here involved is to be given "great weight" by this court—"is entitled to exercise *marked influence* on the question"—then the constitution and the statutes ought to provide that such questions should be *first determined by the state courts* instead of providing, as they do, that the existence of such federal questions shall be ground for *original* jurisdiction in the Federal courts, or give a right to remove the case from the state to the Federal court.

To make the position of the court consistent and to avoid absurd results, the Federal Circuit Courts ought to be closed to litigants in such cases. As it is, the Federal courts being open to parties relying upon the contract clause of the constitution, the result of the rule adopted by this court will be to compel parties whose contracts are with a state, and who desire to have the question of their impairment passed upon by this court, *unaffected by a decision of the courts of the very state with which the contracts were made, to so shape their cases that they may appear as plaintiffs in the Federal courts in the first instance.*

It is evident that, in the case of federal questions, whether the case comes on appeal from the state court or from the Federal Circuit Court is largely a matter of accident. In either case the right and duty of this court in the exercise of its appellate jurisdiction must be the same. In fact, the position taken in the opinion can mean only this: that the question of the construction of a contract with a state, in the form of a legislative grant, does not in reality present a question primarily *federal* in character. And for that reason the present decision is fundamentally inconsistent with the earlier cases.

Again, this further anomaly is presented by the ruling of the majority opinion.

The same constitutional and statutory provisions which give this court power to review the judgment of a state court sustaining a state law, claimed to be violative of a contract between an individual and the state, give it power to review cases in which the state law is claimed to be violative of a contract between two individuals.

The jurisdiction in both cases is given by the same general language of the Federal Constitution, and of the Judiciary Act.

Suppose that, in a case in which it was claimed that the state law violated the obligation of a contract between two individuals, the State Supreme Court should base its decision sustaining the law on a *construction* of the particular contract, there is no possible view in which, on a writ of error to review the judgment in this court, "great weight" would be given to the decision of the state court—a "marked influence on the decision of the question" would be exercised by it,—but the court would determine the question for itself, wholly uninfluenced by the particular decision of the State Supreme Court.

Suppose, on the other hand, that the same question of *construction, on the same language* (as might happen), arose on a contract between the state and an individual, in the form of a special charter, and a judgment of the State Supreme Court in favor of the state was brought to this court for review. In such case, under the ruling of the opinion that "great weight" should be given to the state court's decision,—a "marked influence on the decision of the question" should be exercised by it,—this "great weight," this "marked influence" of the state court decision might be controlling, and might therefore lead to a wholly different and opposite decision of the *same question of construction on the same language* from that which would be given if the contract was between two individuals.

In both the cases supposed this court would exercise the same appellate jurisdiction, and the question to be determined would be the same question of construction. In both cases there would be the same power and duty in the court to decide the question for itself, in the exercise of its independent judgment, and yet, under the ruling of the opinion, the result might be that this court, in the exercise of the same independent judgment, and giving

construction to the same language, might decide this same question one way in the one case and the other way in the other, on precisely the same arguments for and against the particular construction.

Why should there be this different rule, because in the case before the court the particular judgment being reviewed is a decision of a State Supreme Court instead of a Federal Circuit Court, and the contract is a contract between the state whose court rendered the decision instead of a contract between two individuals?

So far from there being any just reason why the decision of the State Supreme Court should be given "great weight," should have this "marked influence on the decision of the question in this court," which would not be given to it and which it would not have if the judgment under review were the judgment of a Federal court, or if the contract was a contract between two individuals instead of between the state and an individual—and which, as we have seen, might be controlling, and therefore lead to a wholly different decision —the reason is the other way.

One of the fundamental reasons for creating the Federal courts, and giving them jurisdiction over the class of cases over which they are given jurisdiction, including cases involving the enforcement of the provision of the Federal constitution that no state shall pass any law impairing the obligation of a contract, was that the Federal courts were presumed to be removed from and beyond the influences of changes in local conditions and policy, to which the courts of the state might be subject. Because of this, it was a peculiarly appropriate and wise provision which gave this court jurisdiction to review the judgments of the highest court of a state, sustaining a law passed by the legislature of the state which it was claimed violated the obligation of a contract.

And the reason for this provision applies with peculiar force in cases in which the contract, the obligation of which it is claimed is violated by the law passed by the state legislature, is a contract between the very state whose legislature passed the law and in which the court of the state sustained the law on its own construction of the contract.

The possibility that the same considerations—the same local conditions or policy—which led the legislature of the state to pass the law claimed to be violative of the obligation of a contract with the state, might also influence the court of the state to sustain the law, was one of the main reasons for conferring on this court, as a court beyond these conditions and influences, a revisory jurisdiction over the judgment of the state court, and is a forcible reason why less rather than greater weight should be given to the decision of the State Supreme Court than should be given to the same decision of the same question by a Federal court.

See the following cases, cited *infra:*

Cohens v. *Virginia*, 6 Wheat., 264.
Martin v. *Hunter's Lessee*, 1 Wheat., 304.
Dodge v. *Woolsey*, 18 How., 331.
Delmas v. *Ins. Co.*, 14 Wall., 660.

So the fact that a case involves the construction of a contract between a state, in whose favor the state court rendered its decision, and an individual, instead of a contract between two individuals, affords no reason why a weight should be given to the state court decision of the same question in the one case, which is not given to it in the other.

On the contrary, the jurisdiction conferred on this court to review the judgment of the state court in both cases, is given by the same general language, and is based on the view that contracts between the state and an individual, whether

in the form of a charter granted by its legislature or of an ordinary contract signed by its executive officers, stand on the same footing and are subject to the same rules as any other contract.

And, so far from there being any reason why the decision of the state court giving a particular construction in favor of the state should be given a weight and effect in this court, which it would not have in a case involving a contract between two individuals, the argument is the other way.

In the case of the contract to which the state is a party, there would be the danger that the state court, being subject to the same conditions and influences which led the legislature of the state to pass the law complained of, might not decide impartially and uninfluenced by such conditions and changes; while in the case of a contract between two individuals, there would be no influence or tendency to favor the one as against the other, in giving a construction to the contract.

In *Cohens* v. *Virginia*, 6 Wheat., 264, Mr. Chief Justice MARSHALL says (p. 386):

"States may legislate in conformity to their opinions and may enforce those opinions by penalties. *It would be hazarding too much to assert, that the judicatures of the states will be exempt from the prejudices by which the legislatures and people are influenced, and will constitute perfectly impartial tribunals. In many states the judges are dependent for office and for salary on the will of the legislature.* The constitution of the United States furnishes no security against the universal adoption of this principle."

In *Martin* v. *Hunter's Lessee*, 1 Wheat., 304, the court (Mr. Justice STORY delivering the opinion) say (p. 343):

"In respect to the powers granted to the United States they (the state courts) are not independent; they are expressly bound to obedience by the letter of the constitution.

* * * The constitution has presumed (whether rightly or wrongfully we do not inquire) that *state attachments, state prejudices, state jealousies, and state interests, might sometimes obstruct or control, or be presumed to obstruct or control, the regular administration of justice."*

In *Dodge* v. *Woolsey*, 18 How., 331, the court, referring to this court and the jurisdiction given to it by the Constitution and the reasons on which it was based, quotes with approval (p. 357) the following language from the Federalist:

"To avoid the confusion which would unavoidably result from the contradictory decisions of a number of independent judicatures, all nations have found it necessary to establish one tribunal paramount to the rest, possessing a general superintendence, and authorized to settle and declare in the last resort, a uniform rule of civil justice. This is the more necessary where the frame of the government is so compounded that the laws of the whole *are in danger of being contravened by the laws of the parts.* In this case, if the particular tribunals are invested with the rights of ultimate decision, besides the contradictions to be expected from difference of opinion, *there will be much to fear from the bias of local views and prejudices, and from the interference of local institutions.* As often as such an interference should happen, *there would be reason to apprehend* that the provisions of the particular laws might be preferred to those of the general laws from the deference with which men in office naturally look up to that authority *to which they owe their official existence."*

In *Delmas* v. *Ins. Co.*, 14 Wall., 660, the court (Mr. Justice Miller delivering the opinion) at page 668, say:

"This court has always jealously asserted the right, when the question before it was the impairing of the obligation of a contract by state legislation *to ascertain for itself whether there was a contract to be impaired.* If it were not so, the constitutional provision *could always be evaded by the state courts giving such construction to the contract*, or such decisions concerning its validity, *as to render the power of this court of no avail in upholding it against unconstitutional state legislation."*

2. *The court's ruling now under consideration is not supported by the case cited in the opinion* (*Wilson* v. *Standefer*, 184 U. S., 399), *nor by any of the previous cases in this court on the same subject, but, on the contrary, all of these cases are based on grounds and reasons which have no application to the case before the court.*

The court, in support of its conclusions that "great weight" should be attached to the decision of the State Court, and that such decision "is entitled to exercise *a marked influence* on the question," cites and quotes from *Wilson* v. *Standefer*, 184 U. S., 399.

The court quotes the following language of the opinion:

"Especial respect should be had to such decisions (of state courts) when the dispute arises out of *general* laws of a state regulating its exercise of the taxing power or relating to the state's disposition of its public lands. In such cases it is frequently necessary to recur to the history and situation of the country in order to ascertain the reason as well as the meaning of the laws, and knowledge of such particulars will most likely be found in the tribunals whose special function is to expound and interpret state enactments."

As to this case we say:

In that case, there was a Texas statute, providing for the sale of lands belonging to the state, which contained, in one of its sections, a provision for the forfeiture, by a judicial proceeding, of the contract of purchase in the event of default in the payment of interest, and land was sold under this statute. After the sale, the Texas legislature passed a statute, which authorized a forfeiture of contracts for the sale of state lands in the event of default in the payment of interest, without a judicial proceeding.

The Supreme Court of Texas held that the later statute merely affected the remedy on the contract and did not impair its obligation—that the provision in the earlier act in

regard to forfeiture did not constitute an essential part of the contract, but was merely in effect a general law as to the remedy.

On writ of error, this court expressly held that this conclusion of the Supreme Court of Texas was correct.

This court said (184 U. S., pp. 415-416):

"We agree with the conclusion of the Supreme Court of Texas that no contract rights of a purchaser under the act of 1879 were impaired by the provisions of the subsequent act of 1897; that the twelfth section of the act of 1879, was not, in legal contemplation, a stipulation by the state that the only remedy which might be resorted to by the state was the one therein provided for; that in the language of Chief Justice MARSHALL 'the distinction between the obligation of a contract and a remedy given by the legislature to enforce that obligation, exists in the nature of things, and without impairing the obligation of the contract, the remedy may certainly be modified as the wisdom of the nation may direct.' *Sturges* v. *Crowinshield,* 4 Wheat., 122."

And it is perfectly evident from the reasoning of the court, in other passages of its opinion, that it entirely agreed with the opinion of the Supreme Court of Texas on the point.

In the opinion in 184 U. S., immediately preceding the passage quoted by the court in the opinion on file, is the following passage:

"As the general rule is that the interpretation, put on a state constitution or laws by the Supreme Court of such state, is binding upon this court, and as our right to review and revise decisions of the state court in a case where the question is of an impairment by legislation of contract rights, is an exception, perhaps the sole exception, to the rule, it will be the duty of this court, even in such a case, to follow the decision of the state court, when the question is one of doubt and uncertainty."

Taking the language just quoted in connection with the passage quoted by the court from the opinion in 184 U. S.,

and it is perfectly clear that the case is not an authority for the propositions laid down in the opinion on file on this point.

(1) In the first place, it is evident that the case did not require the court to lay down any such proposition as that for which it is cited in the opinion on file. It was, as we have already said, a case in which this court was clearly of the opinion that the decision of the Supreme Court of Texas was correct, and this being so, there was no necessity whatever for the court's discussing what, if any, influence that decision should have upon this court in passing on the question.

In any view, therefore, even if the passage relied on in the opinion on file could be held in any way to support the proposition for which it is cited, it was a mere *obiter dictum.*

(2) But *further,* we submit that no such doctrine, as is laid down in the opinion, derives any support from the passage quoted from the case in 184 U. S.

We submit that all that was expressed in the passage quoted from that case was the well known rule referred to, *infra,* laid down in *Burgess* v. *Seligman,* 107 U. S., 20.

(3) The statute, the construction of which was involved in the particular case cited in the opinion was a *general* law of the state, and the view expressed was in terms based on this fact. The court say: "Especial respect should be had for such decision where the dispute arises out of *general* laws of the state."

In the case before the court the question is not as to the construction of a *general* law of the state.

The sole question is as to the construction of plaintiff's special charter, *a special grant to it alone.*

Such a special charter, it has been uniformly held, stands as to the state on the same footing as if, instead of a grant by the legislature, *there was an ordinary contract, executed by the executive officers, acting by authority of the state.* The only difference is that in the case of the charter the state acts directly through the legislature in making the contract, by the grant of the charter, which, when accepted, becomes a contract with mutual obligations, and in the other case the state acts through its executive officers, exercising a delegated authority.

The decision by the State Supreme Court in the case before the court was not, as the language of the opinion assumes, a decision of a question "under the constitution or *laws* of its own state," or a decision of " a dispute which arose out of the *general* laws of the state," or an " interpretation " by the State Court " of the *statutes* of its own state."

The distinction is illustrated by the previous decisions of this court on the same points, beginning with *Burgess* v. *Seligman*, 107 U. S., 20, on which *Wilson* v. *Standefer* was presumably based.

In every one of these cases, in which weight was given to the decision of the State Court, the statute, the construction of which was involved, was a *general* law of the state. See

Burgess v. *Seligman*, 107 U. S., 20.

Board of Liquidation, etc., v. *Louisiana*, 179 U. S., 638.

And in these cases the decisions of the State Court referred to as giving a construction to the *general* law, and therefore entitled to weight, were decisions in other cases between other parties, and *not the very decision before the court for review.*

(4) In the leading case of *Burgess* v. *Seligman*, in which the doctrine of these cases was first clearly stated, and in the cases following it, the jurisdiction of the Federal courts arose out of the diversity of citizenship existing between the parties, and this fact furnishes the explanation and illustrates the meaning of the rule there adopted and applied.

It is clear that where a Federal court, in the exercise of a jurisdiction dependent upon the diverse citizenship of the parties, is called upon to decide upon the construction of some state statute or constitution, the situation is wholly different from that which is presented when the very basis and occasion of the jurisdiction of the Federal court is the existence of a Federal question, involving the construction of some contract of the state. In the first case, a decision by the United States Supreme Court is in the exercise of a jurisdiction merely concurrent with that of the state courts, and is in no way controlling or binding upon the state courts; in the second case, the decision of the United States Supreme Court is in the exercise of an appellate jurisdiction, and is final and conclusive upon the state courts, as well as upon the lower Federal courts.

The "balanced with doubt" doctrine, as it is stated in *Burgess* v. *Seligman*, 107 U. S., 20, and the line of cases following it, was adopted, as this court then said, in order to avoid confusion in cases where the jurisdiction of the state and Federal courts was concurrent, and there was no final tribunal to review the judgments of both courts. The reason of the rule stated in *Burgess* v. *Seligman*, therefore, wholly fails when applied to cases which involve a Federal question,

and in which the judgment of the United States Supreme Court is final as to both state and Federal courts. In the exercise, therefore, of this final appellate jurisdiction in cases in which the very ground of its jurisdiction is the existence of a Federal question, there is no more reason why the United States Supreme Court should attach any greater weight to the decision of a state court than to the decision of a Federal court. This must be so in cases where the contract in question is between individuals, and if contracts with the state are to be held to present any Federal question at all, the rule of construction to be applied to them cannot consistently be different.

The Supreme Court in all such cases is required to review, as a final appellate tribunal, the decisions of both state and Federal courts. It is not deciding a question of general law, or the construction of some general state statute, as to which the state courts may, if they choose, continue to hold a different view. It is deciding a question of construction as to a particular contract, affecting only the parties before it, in a case in which its judgment is, by the constitution and laws of the United States, made final. Under such circumstances, it is impossible for this court to adopt consistently, as the ground of its decision in such a case, a rule which gives to the decision of one of two lower courts of concurrent jurisdiction greater weight than is given to the decision of the same question by the other court.

To enlarge, as the court does in this case, the "balanced with doubt" rule, applied in such cases as *Burgess* v. *Seligman*, to a principle which makes the decision of the State Court conclusive unless "clearly erroneous," so that this court feels bound to follow it, even though "with some hesi-

tation," is, so far as it goes, an absolute surrender of the appellate jurisdiction of this court.

We submit that it is impossible for an appellate court to mantain consistently such an attitude.

(5) The reason given by the court in 184 U. S. why this "especial respect should be had" to State Court decisions "where the dispute arises out of *general* laws," is that "knowledge" of "the situation and history of the country at the time the law was passed will most aptly be found in" the courts of the State.

This reason does not apply to the case before the court.

The decision of the State Supreme Court in 174 Ill. was rendered more than forty years after the charter in question was granted, and by a court organized under wholly new conditions, and twenty-five years after a pronounced change in the policy of the state as to exemptions from taxation by the adoption of the constitution of 1870 and the passage of the new revenue law of 1872, to give effect to this change of policy.

As to "the history and situation of the country" at the time the particular charter was passed (forty years before the decision was rendered), the particular judges could have no personal knowledge. In fact this "history and situation of the country," so far as they bore on the construction of the charter, were matters shown either in the published laws or in the general history of the state, of which this court has the same judicial knowledge as the State Court.

So far as the State Court, as organized at the time the decision was made, had any knowledge of or could be influenced by surrounding conditions, they were the changed conditions which resulted in the change of the constitution and laws of the state on the subject of exemption from taxation,

and at a time when these changed conditions had existed for more than twenty-five years.

In fact, the particular judges who rendered the decision had presumably formed their views on the general subject under these new and changed conditions, and under the influence of this changed policy.

And as we have shown *supra,* it was because of just such possible changes in local conditions, which might lead to a repudiation under the form of law of contracts entered into in good faith, that the Federal Supreme Court was given a jurisdiction to review the decisions of the State Supreme Court, for the precise reason that it is removed from, and presumably uninfluenced by, these changed conditions. One of the very objects of this revisory power would be defeated by giving to the State Court decision the effect given it by the majority opinion.

III.

THE REASONING OF THE OPINION OF THE STATE COURT IN 174 ILL., WHICH THIS COURT QUOTES AND ADOPTS AS THE SOLE BASIS OF ITS DECISION, GIVING THE SAME CONSTRUCTION TO THE EXEMPTION PROVISION WHICH THE STATE COURT GAVE TO IT, IS CLEARLY ERRONEOUS, AND RESULTS IN GIVING TO THE WORDS "SAID SEMINARY" AND "BELONGING TO" IN THE PROVISION A MEANING WHICH IS WHOLLY UNREASONABLE AND CONTRARY TO THE MANIFEST INTENTION OF THE PROVISION.

The reasons in support of this proposition, with references to the brief, are fully stated *supra.*

JOHN J. HERRICK,
DAVID FALES,
Attorneys for Plaintiff in Error.

I hereby certify that, in my opinion, the foregoing petition for a rehearing is well founded in point of law.

(Signed) JOHN J. HERRICK,
Attorney for Plaintiff in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

Nos. 140 and 265.

THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL SEMINARY, *Plaintiff in Error,* **v. THE PEOPLE OF THE STATE OF ILLINOIS ex rel. SAMUEL B. RAYMOND, County Treasurer and ex-officio County Collector of Cook County, Illinois.**	Error to the Supreme Court of the State of Illinois.

STATEMENT OF THE CASES.

These are writs of error to the Supreme Court of Illinois to review the action of that court affirming County Court judgments for delinquent taxes levied against the real estate of plaintiff in error, which real estate is not a part of or connected with the school or seminary which plaintiff in error has located and is maintaining in the City of Chicago. Plaintiff in error claims that all of its real estate is exempt under its charter which was granted prior to the constitution of 1870. Section 2 of the charter requires that the seminary be located in or near the City of Chicago; section 4 empowers the directors to appoint "such officers, professors and teachers as the

government and instruction of the seminary may require." Section 5 is as follows:

> "That the property, of whatever kind or description, belonging or appertaining to said seminary, shall be forever free and exempt from all taxation for all purposes whatsoever."

The Supreme Court of Illinois, in a prior case reported as *People* v. *Chicago Theological Seminary*, 174 Ill., 177, construed this charter with reference to the exemption granted by it. The decision in that case was held to be final and conclusive as to all questions there decided and constitutes a bar to the same questions raised in the present proceedings.

The provisions of the revenue act of the State of Illinois in force at the time of the granting of the charter of plaintiff in error which are material to the issues at bar are as follows:

> "Sec. 1. All property, real and personal, within this state, shall be liable to taxation, subject to the exceptions hereinafter stated.
>
> Sec. 4. The following property shall be exempt from taxation: * * * 3d. All lands belonging to the school fund of any township in this state, and every school house, court house, jail, and the land whereon such buildings are situated, all property which is, or may be, exempt from taxation by special law, and all county lands and buildings set apart for county purposes, not to exceed five acres. * * * 5th. Every building erected for the use of any literary, religious, benevolent, charitable or scientific institution, and the tract of land on which the same is situated, not exceeding ten acres."
>
> Scates & Blackwell's Revised Statutes 1866, Vol. 2, pages 987-988.

The corresponding provisions of the revenue act of 1872 are as follows (Vol. 3, Starr & Curtiss's Ann. Stat. 1896, page 3398):

> "Sec. 1. That the property named in this section shall be assessed and taxed, except so much thereof as may be in this act exempted.
>
> First. All real and personal property in this state."
>
> "Sec. 2. All property described in this section, to the extent herein named, shall be exempt from taxation, that is to say,
>
> First. * * * All property of institutions of learning, including the real estate on which the institutions are located, not leased by such institutions or otherwise used with a view to profit."

Plaintiff in error claims that the Supreme Court of Illinois erred in holding that its charter does not exempt the real estate assessed; that, under a proper construction of its charter, all real estate owned by it is exempt, and that, therefore, the revenue act of 1872, under which the assessment was made and the taxes levied, impairs the obligations of its contract.

Per contra it is urged that this court has no jurisdiction, and that upon a proper construction of the charter only such real estate is exempt as is a part of or connected with the seminary or school.

The grounds upon which these contentions are urged will appear fully in the brief and argument.

BRIEF OF ARGUMENT.

I.

THIS COURT HAS NO JURISDICTION TO REVIEW THE JUDGMENT OF THE STATE COURT.

1. *One of the grounds for the judgment of the state court is res judicata, and this is not a Federal question.*

It is well settled law that where there are two grounds for the judgment of a State Court, only one of which involves a Federal question and the other is broad enough to maintain a judgment sought to be reviewed, this Court will not look into the Federal question but will dismiss the writ of error.

Bacon v. *Texas*, 163 U. S., 207;
Eustis v. *Bolles*, 150 U. S., 361;
Beaupre v. *Noyes*, 138 U. S., 397;
Rutland v. *Central Vermont R. R.*, 159 U. S., 630;
Gillis v. *Stinchfield*, 159 U. S., 658;
Seneca Nation v. *Christy*, 162 U. S., 283.

2. *The state court did not give effect to and enforce a new rule of exemption established by the revenue act of 1872. It was not necessary to determine whether the act of 1872 changed the rule of exemption; the State Court did not pass on any such question.*

Knox v. *Exchange Bank*, 12 Wallace, 383;
Railroad Co. v. *Rock*, 4 Wallace, 177-181;

St. Paul, etc., Ry. Co. v. *Todd Co.*, 142 U. S., 282;

Railroad Co. v. *McClure*, 10 Wallace, 511-515.

II.

THE CHARTER OF PLAINTIFF IN ERROR EXEMPTS ONLY SUCH PROPERTY OWNED BY IT AS IS A PART OF OR CONNECTED WITH ITS SEMINARY LOCATED IN THE CITY OF CHICAGO.

1. *The exemption clause of the charter has been construed by the Supreme Court of Illinois in Theological Seminary* v. *People, 174 Ill., 177, and this is res judicata.*

2. *It is the law of the State of Illinois, as it is the law adhered to by the Supreme Court of the United States, that all laws exempting property from taxation must be strictly construed. It is not to be presumed that the legislature intended to exempt property from taxation; that intention must appear affirmatively, and will be strictly construed.*

As to the question of strict construction of contracts exempting property from taxation when there is involved a question of the alleged impairment of that contract contrary to the provisions of the Federal Constitution, reference is had to the following adjudicated cases:

Wilmington & Weldon R. R. v. *Alsbrook*, 146 U. S., 279-293;

Delaware Railroad Tax, 18 Wall., 206;

Farrington v. *Tennessee*, 95 U. S., 679;

Ohio Life Ins. Co. v. *Debolt*, 16 Howard, 416;

Railroad v. *Dennis*, 116 U. S., 668;
Providence Bank v. *Beattie*, 4 Peters, 514;
Charles River Bridge v. *Warren Bridge*, 11 Peters, 544;
Chenango Bridge Co. v. *Binghampton Bridge Co.*, 2 Wall., 51;
University v. *The People*, 99 U. S., 309.

The Supreme Court of Illinois has consistently adhered to the same rule.

First M. E. Church of Chicago v. *City*, 26 Ill., 482;
Montgomery v. *Wyman*, 130 Ill., 17;
Theological Seminary v. *The People*, 101 Ill., 518;
In Re Swigert, 123 Ill., 267.

The title of an act furnishes little aid in the construction of the provisions of the act itself, and can only be referred to when there is a doubt as to the meaning of the act itself, and when necessary to refer to the title that fact of itself is sufficient to defeat the claim of exemption.

Hadden v. *The Collector*, 5 Wall., 107-110;
Yazoo R. R. Co. v. *Thomas*, 132 U. S., 174-188.

A reasonable and consistent construction of the exemption clause of the charter of plaintiff in error calls for the following definitions of the words used, viz., the verb "belong" is to be defined as "to be a part of or connected with," as is given in Webster's International Dic-

tionary. And the word "seminary" is to be defined, according to the same authority, as "a place of education, as a school of a high grade, an academy, college or university."

Construing the exemption clause of the charter in this manner it will exempt all property owned by the corporation which is a part of or connected with the school, which the corporation has located and is maintaining in the City of Chicago.

ARGUMENT.

I.

THIS COURT HAS NO JURISDICTION TO REVIEW THE JUDGMENT OF THE STATE COURT.

1. *One of the grounds for the judgment of the State Court is res judicata, and this is not a Federal question.*

Under the revenue law of the State of Illinois, the County Court is required to hear and determine applications for judgment against delinquent lands and lots in a summary manner, without pleadings, and to pronounce judgment as the right of the case may be. (Sec. 191, Chap. 120, Revised Statutes. See appendix, page 34.) In 1897 application was made for judgment for taxes delinquent for the year 1896, and plaintiff in error then appeared in the County Court of Cook County and made objection that under its charter all of its property was exempt. This litigation was carried to the Supreme Court of Illinois and that court rendered the opinion reported in 174 Ill., 177. (*People* v. *Theological Seminary*, pp. 34-40, appendix, which by stipulation is a part of the evidence in No. 140.) Neither in the County Court nor in the Supreme Court was it ever intimated that any Federal question was involved. Such a question was not raised by the parties, and, therefore, under no circumstances could that case have ever been brought to this Court for review.

We submit that the judgment in that case is final and conclusive between the parties as to the questions actual-

ly discussed and adjudicated in and by this decision of the Supreme Court. This was the view taken by the Illinois Supreme Court in the cases at bar. In the opinion in No. 140 the Court entered into a very elaborate discussion of the scope and effect of the judgment and decided that under the provisions of the practice act of the State it is final and conclusive on the parties as to the construction of the exemption clause of the charter of plaintiff in error. Counsel misapprehend the scope of the decision in No. 140, when they say that the former judgment was taken only as an estoppel against an estoppel or was referred to simply as *stare decisis*.

> "This record," says Mr. Justice Magruder, "presents a case where the defendants set up a former judgment in its favor as an estoppel or *res judicata*, and the plaintiff insists upon another and later judgment, involving the same question, rendered in favor of such plaintiff, by a court of superior and appellate jurisdiction. (p. 57, Pr. Rec. 140.)"

The Court then proceeds and determines that, at common law, one judgment would offset the other and that the question would be left open to be tried over.

The Court further discusses the force and effect of the judgment in question and, after a lengthy review of the authorities, continues (pp. 60, 61, Pr. Rec. 140):

> "In the light of the authorities above referred to, the judgment entered by the court in the case of *People* v. *Theological Seminary, supra*, cannot be regarded otherwise than as final, so far as the question as to the exemption of the property here involved from taxation is concerned. If the appellant had reinstated the former case upon the docket in the County Court, and again brought it to this court, the question, which we there determined, would not have been reconsidered, and would not have been open for discussion. Here, although the

parties and subject-matter are the same as the parties and subject-matter in the former actions, yet the cause of action is different. Consequently, the material question here is, what fact or matter was determined or adjudicated in the former actions, and such fact or matter may be shown, by extrinsic evidence. Proof was introduced in this case to show what question was decided in the former actions, and proof has also been introduced to show what question was decided by the later judgment rendered by this court.

"It follows that the judgment rendered by this court, reversing the former judgment of the county court, in connection with the proof as to the question there involved, must be held to be an estoppel, as showing a former recovery or *res judicata*.

"It would be singular, indeed, if the party who had obtained the decision of an important question before the court of last resort, and obtained that decision in such a way that the question involved was finally settled between the parties, could not receive any benefit from such decision in a subsequent litigation where the same question was sought to be again raised."

There can be no mistaking the meaning of this language of the Illinois Court. Let us for a moment consider the situation of the parties. The people made application for judgment and the objector appeared and, among other objections, urged, *in bar* of the people's claim, a number of former recoveries as *res judicata*. No formal pleadings being required and the hearing being informal, the people at the proper time introduced in evidence the opinion of the Supreme Court of Illinois in which the question of the same exemption under the same charter and between the same parties had been fully determined and passed upon.

According to what rule of law can it be rightfully

held that the *only* purpose of the introduction of this opinion was to offset one judgment against the other? If there had been any pleadings, and by the pleadings, the judgment or opinion had been set up *only as such offset*, we would be free to admit some force to such a claim. Let us again refer to Mr. Justice Magruder's opinion (p. 58, Pr. Rec. 140):

> "Whatever may be the rule upon this subject in other jurisdictions, a judgment rendered by this court reversing and remanding a cause for further proceedings in acordance with the views expressed in the opinion rendered is a final judgment, so far as the questions decided in the opinion are concerned."

Here was a clear cut issue between the parties as to whether there is a former recovery or *res judicata*. The recovery of the judgment was admitted, but it was sought to avoid it by contending that it was *not final*. This question also was fully considered. The Court said (pp. 61-62, Pr. Rec. 140):

> "It thus appears that the opinion of this court in *People* v. *Theological Seminary, supra*, is, by stipulation, made a part of the evidence in the case at bar. The case, as here presented, therefore, shows upon its face the particular question decided by this court and is not merely a general allegation, that a judgment of reversal and remandment for further proceedings was entered. While it may be true that, as a general thing, a reversal remands nothing but its own correctness, and simply nullifies the former judgment or decree, declaring that it shall henceforth be void, yet it may have a more extensive operation, either as a bar or as an estoppel, if it is shown that it directly affirms or denies some distinct fact in issue. (*Harvey* v. *Richards*, 2 Gallison, 216.) The judgment of reversal is here shown to directly determine a distinct ques-

> tion which was in issue, and, therefore, it operates as a bar or estoppel."

The Court also disposes of the question that no mandate was filed, and (p. 62, Pr. Rec. 140), holds that that fact does not and cannot have any

> *"effect upon the validity and finality of the judgment rendered by this court, so far as the question here involved was determined and settled by that judgment."*

The only "question here involved" and "settled by that judgment" was the construction of the exemption clause of the charter. We have a clear cut and unmistakable decision that the judgment in *People* v. *Theological Seminary, supra*, finally settled the construction of the exemption clause and is a bar. We submit that every other question might with propriety have been eliminated from the discussion and the same judgment of affirmance rendered.

This is one of the grounds on which the judgment below was rendered, and the writ of error ought to be dismissed.

> *Bacon* v. *Texas*, 163 U. S., 207;
> *Eustis* v. *Bolles*, 150 U. S., 361;
> *Beaupre* v. *Noyes*, 138 U. S., 397;
> *Rutland Railroad* v. *Central Vermont Railroad*, 159 U. S., 630;
> *Gillis* v. *Stinchfield*, 159 U. S., 658;
> *Seneca Nation* v. *Christy*, 162 U. S., 283.

It is urged that in No. 265 there is no question of *res judicata*. We submit, however, that the opinion of the court, by Mr. Justice Carter (page 31, Pr. Rec.), clearly shows that the judgments in *People* v.

Theological Seminary, 174 Ill., 177, and *Chicago Theological Seminary* v. *People*, 189 Ill., 439, were regarded as final adjudications in regard to the matter involved, and that for that reason the judgment was affirmed.

If plaintiff in error had considered that the decision in 174 Ill. was not a final adjudication of the questions involved, there is no reason why it could not have filed the mandate of reversal and obtained a judgment in the County Court in conformity with the mandate and then have brought that judgment to this Court for the review of any alleged Federal question.

It appears to have been satisfied to let that judgment remain undisturbed, but it now seeks to induce this Court to believe that it is not final, by urging the same objections urged in the Court below, which objections were declared by that Court, under the laws of Illinois governing the practice in the courts there, to be not well founded. No objection is urged here, and no errors have been assigned, that the Illinois Court erred in deciding the questions of practice which are involved.

2. *The State Court did not give effect to and enforce a new rule of exemption established by the act of 1872. It was not necessary to determine whether the act of 1872 changed the rule of exemption. The State Court did not pass on any such question.*

It does not appear that the Supreme Court of Illinois has given effect to any of the provisions of the revenue act of 1872, except upholding the right of the State to assess property which was subject to taxation. In determining what property is subject to taxation,

no regard whatever was given to any of the provisions of the act of 1872. The act of 1872 is an act for the assessment of property and for the levy and collection of taxes, and is simply a revision of the laws of the State of Illinois and a continuation of then existing laws of the state, except in so far as particular provisions have been altered or changed. We admit that the state cannot pass any law impairing the obligation of a contract. It is the province of the State Courts to construe that charter with reference to the constitution and laws of the State in force at the time of the granting thereof. We submit that a re-enactment of a law is not the passing of a new law within the inhibition of the Federal Constitution, and that the inquiry of the Court should be, whether the new law prescribes a new rule of action, or creates new rights, or imposes new liabilities, and whether the State Courts *have enforced or given effect to the new obligations thus created.*

Counsel for plaintiff in error have made a very elaborate argument on the construction of the charter, and have attempted to show that the construction claimed by the State would, if adopted, lead to all kinds of absurd and ridiculous situations. They have, however, nowhere pointed out any provisions of the revenue act of 1872 upon which the right to tax is based, nor have they shown wherein this differs from the old law. What provisions of the constitution of 1870 or the revenue act of 1872 have been invoked or given effect to which would authorize this Court to review the findings of the State Court? Let us assume that under the revenue act of 1872 an altogether different rule of exemptions exists, must it not appear that the Supreme

Court of Illinois enforced against the plaintiff in error that different rule of exemption? As a matter of fact, all that the Supreme Court of Illinois did was to maintain the right of the State to assess property for taxation which was not exempt under the provisions of the charter of plaintiff in error. The Supreme Court of Illinois did not give effect to any of the provisions of the act of 1872, except such provisions as were in the revenue acts of the State in force at the time of the granting of this charter.

The *revenue act* of 1845 provided for the assessment of *all* property, real and personal, "subject to the *exceptions hereinafter stated.*"

The revenue act of 1872 provides for the assessment of *all* real and personal property, "except so much thereof as may be, *in this Act,* exempted."

The exemptions in the act of 1845 are

> "every school house * * * and the land whereon such buildings are situated," also "every building erected for the use of any literary, religious, benevolent, charitable or scientific institution, and the tract of land on which the same is situated, *not exceeding ten acres.*"

The exemptions in the act of 1872 are:

> "all property of institutions of learning, including the real estate on which the same are located, not leased by such institution or otherwise used with a view to profit."

The Illinois Supreme Court held this to mean only the real estate on which the buildings are situated.

Theological Seminary v. *People,* 101 Ill., 578.

The exemptions granted under the act of 1845 were

strictly construed by the Illinois Supreme Court. It was held that the buildings must not be *"rented for a profit."*

Mr. Chief Justice Caton said:

> "The meaning of this law is, as applied to religious buildings and furniture, that they must be used directly for sacred and not for secular purposes."
>
> *First M. E. Church* v. *City of Chicago*, 26 Ill., 482-488.

It will be seen that the exemptions in the act of 1872 *are identical with those in the act of 1845*, except that the act of 1872 is *more liberal*, not confining the amount of land to ten acres.

It is true that the act of 1845, by express terms, exempted "all property which is, or may be, exempt from taxation by special law." This, however, cannot be of any special moment. The property involved here was subject to assessment prior to the adoption of the constitution of 1870. No different rule of exemption having been invoked than could have been invoked under the law which was in force at the time of the granting of this charter, we maintain that the cases at bar are brought directly within the doctrine of *St. Paul, etc., Ry.* v. *Todd County*, 142 U. S., 283, for the reason that the subsequent law, so far as any question arising here is concerned, was the same as the law under which the charter was granted.

> "The position of the state court was not that the lands in question were rendered taxable by any law passed subsequent to the company's charter, but that under the terms of the contract itself the lands were taxable."

Plaintiff in error does not seek any rights to exemption under the revenue act of 1872. Whether that act exempts any or all or none of the property of plaintiff in error is immaterial.

It is not the constitution of 1870, nor is it the revenue act of 1872, which creates or establishes the rule of exemption which has been here applied to the charter of plaintiff in error. No rule contained in these new enactments has been enforced to fasten upon the property assessed under those acts any burden of taxation to which it was not liable under the old law.

We have here practically the same general provisions that we find in the Minnesota statutes quoted in *St. Paul, &c., Railway* v. *Todd County*, 142 U. S., 282. There the new law provided that all real and personal property in the state, etc., "*except such as is hereinafter expressly excepted,*" should be subject to taxation. The old law contained the exception "not expressly exempted therefrom."

The property *was assessed* under a new law, and it was upon this assessment that the taxes had been spread and this action *under a new law had been sustained by the state court.*

In commenting upon the law, Mr. Chief Justice Fuller quotes from the opinions by Mr. Justice Gray, in *New Orleans, &c.*, v. *Louisiana Sugar Refining Company*, 125 U. S., 18-30, and by Mr. Justice Miller, in *Railroad Company* v. *Rock*, 4 Wall., 177-181, and *Knox* v. *Exchange Bank*, 12 Wall., 379-383, to the effect that it must be a subsequent law or constitution of the state which impairs the obligations of a contract and that *effect must have been given to such subsequent law or constitution*, and then proceeds:

"The position of the state was not that the lands in question were rendered taxable by any law passed subsequent to the company's charter, but that under the terms of the contract itself the lands were taxable. No subsequent law is referred to upon which the opinion of the court proceeded; on the contrary, the law was the same, so far as any question arising here was concerned, as that above quoted from the territorial law of 1851. What the court held was that the statutes imposing restrictions upon the taxing power of a state, except so far as they tend to secure uniformity and equality of assessment, are to be strictly construed, *Bank* v. *Tennessee*, 104 U. S., 493, and that tested by this rule the exemption in the company's charter 'was not applicable to large tracts of timber land purchased by the corporation from which to take timber to be converted into ties and lumber for the use of the corporation,' and that consequently these lands were subject to taxation. It is impossible, therefore, for this writ of error to be sustained, and it is accordingly dismissed."

In

R. R. Company v. *McClure*, 10 Wallace, 511-515,

it was said:

"But the state has passed no law upon the subject, and the constitution of the state, which, as construed by the Supreme Court of the state, has worked the result complained of, was in force when the bonds were issued."

In

Knox v. *Exchange Bank*, 12 Wall., 383,

this Court said:

"It is rather insinuated than declared that the court gave such effect to the act of February, 1866, under which the bank made its assignment. But

nothing in the record shows that the court based its judgment on any such proposition."

And in

Railroad Company v. *Rock*, 4 Wallace, 171-181:

> "It must be the constitution or some law of the state, which impairs the obligation of a contract, or which is otherwise in conflict with the constitution of the United States; and the decision of the state court must sustain the law or constitution of the state in the matter in which the conflict was supposed to exist, or the case for this court does not arise."

Whenever this Court has assumed jurisdiction in matters of this kind, so far as we have been able to interpret the decisions of the Court, some provision of a new law which changed the rights and obligations of the parties had been given effect to. Not so in the case at bar. No provisions of any subsequent law have here been invoked or enforced to "render taxable" the lands here in question.

II.

THE CHARTER OF PLAINTIFF IN ERROR EXEMPTS ONLY SUCH PROPERTY OWNED BY IT AS IS A PART OF OR CONNECTED WITH ITS SEMINARY LOCATED IN THE CITY OF CHICAGO.

1. *The exemption clause of the charter has been construed by the Supreme Court of Illinois in Theological Seminary* v. *People, 174 Ill., 177, and this is res judicata.*

This question, and the proper arguments to be made

under it, have been anticipated in the discussion of the question of the jurisdiction of this Court. This is purely a question of the effect of the judgment in 174 Ill., 177, as measured by the practice act of the State.

Counsel for plaintiff in error have at some length argued that the judgment is not final. This Court, as to the meaning of the State practice act, will follow the decisions of the State Court. In the opinion in No. 140, reported as *Theological Seminary* v. *The People*, in 189 Ill., 439, this whole question is very elaborately discussed and it is there decided, on the strength of the numerous cases there cited, that, as to the meaning of the exemption of the charter of plaintiff in error, the judgment of the Supreme Court in *People* v. *Theological Seminary*, 174 Ill., 177, is final and conclusive and is *res judicata*.

We admit that if the exemption clause had been construed for the first time in the cases at bar the subject-matter, if a Federal question is involved, would be open for this Court for its own construction. We do not claim the judgment in the cases at bar as *res judicata*. We do insist that the judgment in *People* v. *Theological Seminary* is *res judicata* and as such ought to have been enforced. Plaintiff in error saw fit not to raise the Federal question, if one existed, in that proceeding and, presumably for that reason, did not avail itself of the opportunity to file the order of reversal and compel the County Court to enter judgment, and thus again take the matter to the higher courts for review. It ought not now be permitted to escape from the effects of a judgment which it permitted to remain in force.

2. *It is the law of the State of Illinois, as it is the law adhered to by the Supreme Court of the United States, that all laws exempting property from taxation must be strictly construed. It will not be presumed the legislature intended to exempt property from taxation. That intention must appear affirmatively, and will be strictly construed.*

In

Wilmington & Weldon Railroad v. *Alsbrook*, 146 U. S., 279-293, on page 294,

Mr. Justice Fuller said:

"The applicable rule is too well settled to require exposition or the citation of authority. The taxing power is essential to the existence of government, and cannot be held to have been relinquished in any instance unless the deliberate purpose of the state to that effect clearly appears. The surrender of a power so vital cannot be left to inference or conceded in the presence of doubt, and when the language used admits of reasonable contention, the conclusion is inevitable in favor of the reservation of the power."

In

Delaware Railroad Tax, 18 Wall., 206,

Mr. Justice Field said:

"If the point were not already adjudged, it would admit of grave consideration whether the legislature of a state can surrender this power and make its action in this respect binding upon its successors, any more than it can surrender its police power or its right of eminent domain. But the point being adjudged, the surrender, when claimed, must be shown by clear, unambiguous language which will admit of no reasonable construction consistent with the reservation of the power.

If a doubt arises as to the intent of the legislature, that doubt must be resolved in favor of the state."

In

Farrington v. *Tennessee*, 95 U. S., 679,

Mr. Justice Swayne said:

"When exemption is claimed, it must be shown indubitably to exist. At the outset, every presumption is against it. A well founded doubt is fatal to the claim. It is only when the terms of the concession are too explicit to admit fairly of any other construction that the proposition can be supported."

In

Ohio Life Insurance Co. v. *Debolt*, 16 How., 416,

Mr. Chief Justice Taney said:

"Neither the right of taxation nor any other power of sovereignty which communities have an interest in preserving undiminished will be held by the court to be surrendered, unless the intention to surrender is manifested by words too plain to be mistaken."

Mr. Justice Gray, in

Railroad v. *Dennis*, 116 U. S., 688,

said:

"The rule has been strictly upheld and constantly reaffirmed in every variety of expression. It has been said that neither the right of taxation nor any other power of sovereignty will be held by this court to have been surrendered, unless such surrender is expressed in terms too plain to be mistaken; that exemption from taxation should never be assumed, unless the language used is too clear to admit of doubt; that nothing can be taken against the state by presumption or inference; the surrender, when claimed, must be shown by clear,

unambiguous language which will admit of no reasonable construction consistent with the reservation of the power; if a doubt arise as to the intent of the legislature, that doubt must be solved in favor of the state; that a state cannot, by ambiguous language, be deprived of this highest attribute of sovereignty; that any contract of exemption is to be rigidly scrutinized and never permitted to extend, either in scope or duration, beyond what the terms of the concession clearly require; that such exemptions are regarded as in derogation of common right, and therefore not to be extended beyond the exact and express requirements of the grants, construed, *strictissimi juris.*"

In

Providence Bank v. *Beattie*, 4 Peters, 514,

Mr. Chief Justice Marshall said:

"That the taxing power is of vital importance; that it is essential to the existence of government; are truths which it cannot be necessary to reaffirm. They are acknowledged and asserted by all. It would seem that the relinquishment of such a power is never to be assumed. We will not say that a state may not relinquish it; that a consideration sufficiently valuable to induce a partial release of it may not exist; but as the whole community is interested in retaining it undiminished, that community has a right to insist that its abandonment ought not to be presumed, in a case in which the deliberate purpose of the state to abandon it does not appear."

In

Charles River Bridge v. *Warren Bridge*, 11 Peters, 544,

it was decided that there must be no ambiguity as to what is exempt. All ambiguities in the terms of the

contract must operate against the grantees and in favor of the public, and the objector can claim nothing that is not clearly given by the act.

In

Chenango Bridge Co. v. *Binghampton Bridge Co.*, 3 Wallace, 51,

it was said:

> "If, on a fair reading of the instrument, reasonable doubts arise as to the proper interpretation to be given to it, those doubts are to be solved in favor of the state; and where it is susceptible of two meanings, the one restricting and the other extending the favor of the corporation, that construction is to be adopted which works the least harm to the state."

In Illinois, the Supreme Court has uniformly held to the strict construction.

Montgomery v. *Wyman*, 130 Ill., 17;
Theological Seminary v. *People*, 101 Ill., 518;
In Re Swigert, 123 Ill., 267.

Prior to the constitution of 1870, the legislature of Illinois passed a special act incorporating certain named persons and their successors a body politic and corporate to be styled "The Board of Directors of the Chicago Theological Seminary." They were empowered "by that name and style" to acquire, hold and convey property. They located a seminary in the City of Chicago. Presumably, this was done to comply with the provisions of section 2 of the charter, "That the seminary shall be located in or near the City of Chicago." The charter provided for a board of directors. The board of directors were given power to appoint "an executive

committee and such agents as they may deem necessary, and such officers, professors and teachers as the government and instruction of the seminary may require." (Sec. 4.)

In the fifth section it was provided:

> "That the property, of whatever kind or description, belonging or appertaining to said seminary, shall be forever free and exempt from all taxation for all purposes whatsoever."

It is this clause which is sought to be construed in the cases at bar.

What is meant by the "seminary" mentioned in the second, fourth and fifth sections? We submit that this charter, as against the state, must be strictly construed. We admit that such construction is to be reasonable and not absurd. "The seminary shall be located in or near the City of Chicago." Will it be maintained that this corporation could have established its school in the City of Springfield? Evidently the incorporators thought they were to locate the seminary in or near the City of Chicago, and accordingly they did locate it in that City, and have always maintained it there. What absurd construction is there in this proposition? Let us now pass on to the fourth section: "The board of directors shall have power to appoint * * * such officers, professors and teachers as the government and instruction of the seminary may require," etc.

Counsel for plaintiff in error would have us believe that the word "seminary" here means "corporation." Teachers and professors to instruct the corporation! In what? To elect the board of directors? To instruct the board of directors how to run the corporation? We respectfully submit that this appears rather absurd. The

officers, professors and teachers are for the purpose of giving instruction in the seminary which is to be located in or near the City of Chicago. What is a seminary? Webster's International Dictionary defines it as "a place of education, as a school of a high grade, an academy, college or university." Of course we must have professors and teachers in a place of education, in a school, especially of a high grade, and the board of directors must appoint them. This is another absurd construction complained of by counsel for plaintiff in error! But we are told that it is the school that is the corporate entity; it is the seminary that is incorporated and that is the artificial person created by this charter; and for proof we are referred to the title of the act. Is it necessary, then, to refer to the title? Is the body of the act of such doubtful meaning that it is only by aid of the title that the word "seminary" can be construed as synonymous with the word "corporation." Under the construction contended for by the People, it is not necessary to refer to the title. We can see nothing doubtful or absurd in the contention that the corporation and the school or seminary are two separate and distinct things, one an artificial person owning, having title to the other.

In

Hadden v. *The Collector*, 5 Wallace, 107-110,

Mr. Justice Field delivered the opinion of the Court and, in speaking of the effect of the title of an act, said:

> "The title of an act furnishes little aid in the construction of its provisions. Originally, in the

> English courts, the title was held to be no part of the act,—'no more,' says Lord Holt, 'than the title of a book is a part of the book.' It was generally framed by the clerk of the House of Parliament, where the act originated, and was intended only as a means of convenient reference. At the present day the title constitutes a part of the act, but it is still construed as only a formal part; it cannot be used to extend or restrain any positive provisions contained in the body of the act. It is only when the meaning of these is doubtful that resort may be had to the title, and even then it has little weight. It is seldom the subject of special consideration by the legislature."

Mr. Chief Justice Fuller, in

Yazoo Railroad Co. v. *Thomas*, 132 U. S., 174-188,

in speaking of a similar question, said:

> "Again the preamble to the act is referred to by counsel as sustaining their construction. * * * But as the preamble is no part of the act, and cannot enlarge or confer powers, nor control the words of the act, unless they are doubtful or ambiguous, the necessity of resorting to it to assist in ascertaining the true intent and meaning of the legislature is in itself fatal to the claim set up."

The claim set up in the Yazoo Railroad case was one of exemption from taxation, and the strict rule of exemption was applied with such rigor that, where the body of the act was of such doubtful meaning that the preamble had to be resorted to, the mere fact of resorting to the preamble was convincing proof that the grant of exemption was so doubtful that it could not be sustained.

A very elaborate argument has been made in the cases at bar, based upon the alleged meaning of the word

"seminary" in the title to the act, in order to substantiate the claim of exemption from taxation. An admission or the fact that the claim to exemption contended for is doubtful or ambiguous, operates to leave the property in question within the operation of the general law subjecting all property to its proportionate share of the public burden and prevents an exception in its favor by exempting it therefrom.

> *"The necessity of resorting to it to assist in ascertaining the true intent and meaning of the legislature is in itself fatal to the claim set up."*
>
> *Yazoo R. R. Co.* v. *Thomas, supra.*

The only reasonable construction is to confine the meaning of the word seminary to the school established in the City of Chicago. Coming now to the exemption clause we find the words "said seminary." Again, we are told that it is absurd to construe these words as meaning anything but "the corporation." And again, we are referred to the title. An admission of doubt and ambiguity. It is also urged that the Court is bound to use the ordinary and primary meaning of "belong." That this implies ownership and that it is only the corporation which can own anything. With all due respect to the courts whose decisions have been cited by counsel for plaintiff in error, the ordinary and primary meaning of the word "belong" is not limited to that implying ownership.

Webster's International Dictionary defines the verb "belong" as follows: "To be a part of or connected with." This is not an absurd meaning and its adoption does not lead to absurd results. The verb "belong," in the sense of "to be a part of or connected with," is of

daily and ordinary use and is readily distinguished from the meaning implying "ownership." A few homely illustrations may not be amiss.

The coat on my back belongs to me, it also belongs to my apparel; the first implies ownership and the second is used in the sense of "a part of."

The chair in my office belongs to me and the arm thereof belongs to the chair. So, in the cases at bar, the plaintiff in error owns many pieces of property situated all over the state, and all these pieces of property belong to it; but only a few pieces belong to, or are a part of, the seminary. The "seminary" belongs to plaintiff in error, and the play grounds, dormitories, recitation halls, seminary buildings, and the grounds on which they stand, the appliances and equipments in the building, libraries, museums, etc., belong to the seminary. It is in this last sense that the word "belonging" is used in the charter. It is used as practically synonymous with appertaining. This word does not imply ownership. This is not an absurd or unreasonable construction, neither can it be rightly called a strict construction. It is a construction giving to the words used a meaning very well understood in the every day vernacular, viz: all property which is a part of or connected with the school or place of education.

Reference has been made by counsel for plaintiff in error to a number of special charters granted by the State of Illinois containing exemption clauses, which in express terms limited the exemption to particularly described property. And it has been argued that if the legislature had intended in the cases at bar to limit the exemptions to particular property it would have speci-

fied such property. Whatever weight this argument may have is offset by the fact that the legislature of the state knew how to exempt all property of corporations created by it. We need refer only to the case of *University* v. *The People*, 99 U. S., 309. The exemption clause of the charter granted to the Northwestern University reads:

> "That all property, of whatever kind or description, belonging to or owned by the corporation, shall be forever free from taxation."

It will be noticed that in this exemption clause the words "belonging to" are explained by the following words—"owned by," giving to the verb "belonging" the meaning of ownership. It will also be noted that the legislature used the word "corporation," and in express terms forever exempted all property owned by the corporation.

In commenting upon the meaning of the constitution of Illinois, under which the charter then in question was passed, Mr. Justice Miller says:

> "The first observation we have to make is that the constitution does not say, 'property used for schools,' as the opinion of the court implies. Neither the important word *used* or *schools* is found in the section of the instrument on that subject. If the language were that the legislature might 'exempt property for the use of schools,' we should readily agree with that court. Indeed, that would be the appropriate language to convey the idea on which the court rests its decision.
>
> The makers of the constitution, however, used other language because they had another meaning, and did not use that because they did not mean that. They said that the legislature might exempt from taxation such property as they 'might deem necessary' (not for the use of schools, but) 'for

> school purposes.' The distinction is, we think, very broad between property contributing to the purposes of the school, made to aid in the education of persons in that school, and that which is directly or immediately subjected to use in the school."

Adopting the argument of the learned Justice to the case at bar, we observe that the legislature of the state did not say "property belonging to or owned by the corporation." They used other language, because they had another meaning; they did not use that because they did not mean that; they did say—"property belonging or appertaining to said seminary;" they qualified the verb "to belong" by the words "appertaining to," thus negativing any idea of ownership. They used the word "seminary" because they did not intend to use the word "corporation." The distinction between the corporation and the seminary, as already pointed out, is very clear. We do not see how even a liberal construction of the words used can negative the idea that the words "belonging or appertaining to" mean "being a part of or connected with," and that the word "seminary" means the school or place of learning, which the *corporation* has located and is maintaining in the City of Chicago.

The rule of strict construction, if applied to the charter, must be applied to every portion thereof, including Sec. 6, upon which counsel for plaintiff in error have laid so much stress. As was said by the Illinois court in

People v. *Theological Seminary*, 174 Ill., 178:

> "To say that liberal rules of construction must, under Sec. 6, be applied in favor of the contention that all property belonging or appertaining to

> the corporation is exempt, would be to beg the whole question. In determining what purpose is expressed in that section, resort must necessarily be had to the general rules for considering such laws. And when that purpose is ascertained, liberal rules of construction, if necessary, are to be resorted to to give effect to such purpose."

The charter is a contract, and the provisions in Sec. 6 can have no greater effect than a contract between two persons that certain provisions of the law (a strict construction in regard to exemptions) are not law. We submit that a provision in a contract that the contract itself shall be construed without reference to certain laws then in force are not such provisions as are within the protecting force of the Federal Constitution, which prohibits a State from passing any law imparing the obligation of a contract.

We respectfully submit that plaintiff in error has not presented a case within the jurisdiction of this court for the reason that the obligations of its charter have not been changed by any legislative act passed, or constitutional provision adopted, since it was granted, nor by construction of either by any court. That the prior adjudication of the scope of the charter of plaintiff in error, as tested by the law applicable to it, was acquiesced in by it as by defendant in error, and both should now abide by that decision. That, however this court may view the objections interposed to plaintiff in error now bringing these cases to this tribunal for a review of the scope of its charter, we earnestly contend that the term seminary, as employed by the General Assembly in its charter grant, did not mean the corporation created, which is co-extensive with the state, and, by comity, with all the states, but meant

simply the school—seminary—place of learning, where was to be afforded the educational facilities and features contemplated in the charter, and that the property in question is not exempted from bearing its proportionate share of the burden of government.

Respectfully submitted.

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FRANK L. SHEPARD,
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Of Counsel for Defendant in Error.

APPENDIX.

In this appendix we have printed a portion of Section 191 of the Revenue Act of 1872, and also the opinion of the Supreme Court of Illinois, in *People* v. *Chicago Theological Seminary*, 174 Illinois, 177.

Sec. 191. The court shall examine said list, and if defense (specifying, in writing, the particular cause of objection) be offered by any person interested in any of said lands or lots, to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may be. The court shall give judgment for such taxes and special assessments and penalties as shall appear to be due, and such judgment shall be considered as a several judgment against each tract or lot, or part of a tract or lot, for each kind of a tax or special assessment included therein; and the court shall direct the clerk to make out and enter an order for the sale of such real property against which judgment is given, which shall be substantially in the following form:

The People v. *Theological Seminary*, 174 Ill., 178:

This is an appeal by the People, on the relation of the county treasurer and ex-officio collector of Cook County, from a judgment of the County Court of said county sustaining the objections of appellee to an application for a judgment of sale of certain of its property

for non-payment of taxes. The objection was that the property in question was exempt and free from all taxation whatever.

It was stipulated that the appellee is the owner of a tract of land other than the tracts described in the objection, upon which is maintained a school for the purposes enumerated in the act of incorporation; also, that the income from the property mentioned in the objection is used for the sole purpose of maintaining such school; that some of the lots are vacant and some are used; that where they are used, all the rentals and income are held by the corporation for the exclusive use and support of the school and for the objects contemplated in the charter; that all the parcels and lots were bought for the promotion of the objects mentioned in the charter; that the lands which are occupied by the buildings or other direct appliances of education are not taxed or included in the parcels represented by the objection; that since the passage of the charter the corporation has accepted the same, and has expended in the erection and purchase of buildings, apparatus and other facilities and appliances for education, being for the promotion of the objects stated in the charter, over $200,000, upon the lots in question and also upon other lots owned by the corporation, and has built up an institution in which a large number of students are instructed, according to its charter.

The act incorporating appellee was approved February 15, 1855, and is entitled "An Act to incorporate the Chicago Theological Seminary." The first section creates certain persons named therein, and their successors, a body politic and corporate, to be styled "The Board of Directors of the Chicago Theological Semi-

nary," with power to acquire, hold and convey property, real and personal. The second section prescribes that the seminary shall be located in or near the City of Chicago; that its object shall be to furnish instruction and the means of education to young men preparing for the gospel ministry, and that the institution shall be equally open to all denominations of Christians for this purpose. The fifth section is as follows: "That the property, of whatever kind or description, belonging or appertaining to said seminary, shall be forever free and exempt from all taxation, for all purposes whatsoever."

The only question presented for our determination is whether or not the property of appellee, described in the application for judgment, is exempt from taxation by section 5 of its charter. Its contention is, that by the language, "that the property, of whatever kind or description, belonging or appertaining to said seminary" all the property owned by it and used for the sole purpose of maintaining its school, of whatever kind or description, wherever situated, is exempt from all taxation. On the other hand, it is insisted on behalf of the people that section 5 is only applicable to and exempts from taxation the property belonging or appertaining to the seminary, which, by the second section of the charter, was to be located in or near the City of Chicago and which has been so located and maintained.

The following propositions laid down by counsel for appellant are supported by the authorities cited, and are, we think, properly applicable to the decision of the issue here presented:

First. All laws exempting property from taxation

are to be strictly construed. *Montgomery* v. *Wyman*, 130 Ill., 17.

Second. The charter is a contract, but it is well settled that nothing can pass by implication. *United States* v. *Arredondo*, 8 Pet., 738; *Charles River Bridge* v. *Warren Bridge*, 11 *id.*, 544.

Third. It should not be presumed that the legislature intended to exempt property from taxation. That intention must appear affirmatively. *Providence Bank* v. *Billings*, 4 Pet., 514.

Fourth. And when such intention appears it cannot be extended beyond the letter and spirit of the act of incorporation. *Beatty* v. *Lessee of Knowles*, 4 Pet., 168.

Fifth. And such intention will be construed strictly. *In re Swigert*, 123 Ill., 267; *Presbyterian Theological Seminary* v. *People*, 101 *id.*, 578.

Sixth. There can be no ambiguity as to what is exempt. All ambiguities in the terms of the contract must operate against the grantees and in favor of the public, and the objector can claim nothing that is not clearly given by the act. *Charles River Bridge case, supra.*

Seventh. If, on a fair reading of the instrument, reasonable doubts arise as to the proper interpretation to be given to it, those doubts are to be solved in favor of the state; and where it is susceptible of two meanings, the one restricting and the other extending the favor of the corporation, that construction is to be adopted which works the least harm to the state. *Chenango Bridge Co.* v. *Binghampton Bridge Co.*, 3 Wall., 51.

That laws exempting property from taxation are generally subject to these rules of construction is not seriously questioned, but counsel for appellee say said

rules do not apply here, because by section 6 of the charter it is provided that the act "shall be construed liberally in all courts for the purposes therein expressed. We do not think this language was intended to or could be held to change or qualify the general rules of construction applicable to the section under consideration. Here the very question to be determined is, what is the purpose expressed in that section? And to say that liberal rules of construction must, under section 6, be applied in favor of the contention that all property belonging or appertaining to the corporation is exempt would be to beg the whole question. In determining what purpose is expressed in the section, resort must necessarily be had to the general rules for considering such laws. When that purpose is ascertained, liberal rules of construction, if necessary, are to be resorted to, to give effect to such purpose. Of course, the foregoing propositions relied upon by the appellant will not justify an unreasonable construction against the claim of exemption. If, however, taking the express words of the act, and without extending their meaning by implication, they may be held to include all property belonging or appertaining to the "seminary" mentioned in the second section, or to include all the property belonging or appertaining to the corporation, and there is reasonable ground for doubt which was intended by the legislature, that doubt must be resolved in favor of the state. In other words, if the language is capable of a broad or more restricted meaning, the latter must be adopted, The second section of the charter mentioning certain property to be located in or near the City of Chicago, and which is denominated "the seminary," we think the

words in the fifth section, "said seminary," refer to that particular property, and to so hold seems to do no more than to give the language of the two sections their literal and ordinarily understood meaning. To say, as is contended by appellee, that "said seminary" was intended to mean the corporation, is to extend the meaning of those words by implication, which is not permissible.

It is said that the only entity mentioned in the charter capable of owning property is the corporation, and therefore it could not have been intended that property belonging or appertaining to the seminary was meant by section 5. We think this position is based upon a too limited meaning of the words "belonging or appertaining" as here used. Of course, if the language of section 5 had been that the property, of whatever kind or description, *owned* by the said seminary shall be forever free from all taxation, etc., or if, as counsel seem to assume, the words "belonging or appertaining" here necessarily meant ownership of the property, then there would be force in this argument of counsel. It is undoubtedly true that the word "belonging" may mean ownership, and very often does. But that is not its only meaning. Webster's International Dictionary defines it: "2. That which is connected with a principal or greater thing; an appendage; an appurtenance." He also defines the word "pertain" as meaning, "to belong or pertain, whether by right of nature, appointment or custom; to relate, as 'things pertaining to life.'" Manifestly, the purpose of section 5 was to exempt property owned by the corporation, but it does not follow that the intention was to include in that exemption all property owned by it used for purposes of the school.

It is said the question for determination in this case has been decided in favor of the contention of appellee in the case of *People ex rel.* v. *Soldiers' Home and Baptist Theological Union*, 95 Ill., 561, following the decision of the Supreme Court of the United States in *Northwestern University* v. *People*, 9 Otto, 309, reversing the decision of this court in 80 Ill., 333. We do not so understand the case cited. The language of the charter of the Soldier's Home and the Baptist Theological Union, under discussion in that case, is as follows: "The property, real and personal, belonging to such corporation, at any and all times hereafter, shall be free and exempt from all taxation and assessments, special or general, for any and all purposes"; and the language of the charter of the Northwestern University is, "that all property, of whatever kind or description, belonging to or owned by such corporation shall be forever free from taxation for any and all purposes," so that there was and could have been no question, upon these charters, as to whether the exemption clause referred only to some particular property or class of property belonging to the corporation, because those charters in unmistakable terms exempt all property belonging to the corporation. We think this case turns upon whether or not the words "said seminary," used in the fifth clause, should be given the meaning of "said corporation." In our opinion the application of the rules of construction above referred to do not warrant such a construction.

The judgment of the County Court will be reversed, and the cause remanded for further proceedings in accordance with the views herein expressed.

Reversed and remanded.

Supreme Court of the United States.

Nos. 140 and 265.—October Term, 1902.

The Board of Directors of the Chicago Theological Seminary, Plaintiff in Error, vs. The People of the State of Illinois ex rel. Samuel B. Raymond, County Treasurer and ex officio Collector of Cook County, Illinois. } In error to the Supreme Court of the State of Illinois.

[February 23, 1903.]

These cases, between the same parties, come here by writs of error to the Supreme Court of Illinois, which held certain property of the plaintiff in error not exempt from taxation. (189 Ill. 439.)

The case No. 140 involves taxes for the year 1899, and No. 265 for the year 1900.

The plaintiff in error claims exemption under its charter passed in 1855, entitled "An act to incorporate the Chicago Theological Seminary," a copy of which is set forth in the margin.*

The Supreme Court of the State held that the provision granting the exemption from taxation in section 5 referred only to property used in connection with the seminary and did not include other property which might be owned, rented or held by the seminary as an investment, although the income thereof was used solely for school purposes. Accordingly property which was not so included and which is involved in these actions was taxed under the general taxing law of the State enacted in 1872. In

*Sec. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That Stephen Peet, (and twenty-three other persons, named in the act,) and their successors be, and they hereby are, created a body politic and corporate, to be styled "The Board of Directors of the Chicago Theological Seminary," and by that name and style to remain and have perpetual succession, with full power, to sue and be sued, plead and be impleaded; to acquire, hold and convey property real and personal; to have and use a common seal; to alter and renew the same at pleasure: to make and alter a constitution and by-laws for the conducting and government of said institution, and fully to do whatever may be necessary to carry out the object of this act of incorporation.

Sec. 2. That the seminary shall be located in or near the city of Chicago. The object shall be to furnish instruction and the means of education to young men preparing for the gospel ministry, and the institution shall be equally open to all denominations of Christians for this purpose.

Sec. 3. That the board of directors shall consist of twenty-four members, nine of whom shall constitute a quorum, for the transaction of business. The directors shall hereafter be elected in accordance with the provisions of the constitution

enforcing the taxation of the outside property of plaintiff in error under that act, it is claimed that the obligation of the contract contained in the act of 1855, the charter of the plaintiff in error, was impaired

It is conceded that the charter of incorporation was duly accepted, and that acting on the faith of its provision the plaintiff in error has acquired by donation and purchase a part of the real estate on which the taxes in question were levied, and in addition has expended in the erection and purchase of buildings on the real estate owned by it an amount exceeding $200,000, and a large number of students have been and are being instructed by it in pursuance of its charter. The pieces of real estate upon which the taxes in these cases were levied were acquired by the plaintiff in error by gift or purchase, and were held by it to promote the objects for which it was incorporated, and the rentals received from such real estate are used for those purposes, although the property is not used in immediate connection with the seminary.

Mr. Justice PECKHAM, after making the foregoing statement of facts, delivered the opinion of the Court.

The Supreme Court of Illinois, by its decision in this case, has but followed its prior decision upon the same question between these parties, reported in 174 Ill. 177, decided in 1898. It there held that the exemption was limited to property used in immediate connection with the seminary, and did not include such property as is involved in these cases, which was not property used in immediate connection with the seminary, but was other property separate and apart therefrom, and owned or rented or held by the seminary as an investment, the income from which was nevertheless used solely for school purposes.

The rule of construction followed by the Supreme Court of Illinois in construing this act exempting property from taxation is so well estab-

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under which they act, and shall hold their office until their successors are appointed.

SEC. 4. The board of directors shall have power to appoint an executive committee and such agents as they may deem necessary, and such officers, professors and teachers as the government and instruction of the seminary may require, and prescribe their duties, to remove any of them for sufficient reasons, and prescribe and direct the course of studies to be pursued in the institution; also to confer such degrees as are consistent with the object of the institution.

SEC. 5. That the property, of whatever kind or description, belonging or appertaining to said seminary, shall be forever free and exempt from all taxation for all purposes whatsoever.

SEC. 6. This act to take effect and be in force from and after its passage, and it shall be deemed a public act, and shall be construed liberally in all courts for the purposes therein expressed.

lished by this and other courts as scarcely to need the citation of authorities. One or two, however, from this court may be given. (*Tucker* v. *Ferguson*, 22 Wall. 527; *New Orleans City & Lake Railroad* v. *New Orleans*, 143 U. S. 192, 195; *Bank of Commerce* v. *Tennessee*, 161 Id. 134, 146.)

The rule is that, in claims for exemption from taxation under legislative authority, the exemption must be plainly and unmistakably granted; it cannot exist by implication only; a doubt is fatal to the claim.

The reasoning of the Supreme Court of Illinois, (174 Ill. *supra*,) in refusing the exemption claimed, so far as relates to the property not connected with the seminary, is best stated in the language of the opinion of that court. After stating the rule of construction, as above mentioned, the court said (p. 181):

"If, however, taking the express words of the act, and without extending their meaning by implication, they may be held to include all property belonging or appertaining to the 'seminary' mentioned in the second section, or to include all the property belonging or appertaining to the corporation, and there is reasonable ground for doubt which was intended by the legislature, that doubt must be resolved in favor of the State. In other words, if the language is capable of a broad or more restricted meaning, the latter must be adopted. The second section of the charter mentioning certain property to be located in or near the city of Chicago, and which is denominated 'the seminary,' we think the words in the fifth section, 'said seminary,' refer to that particular property, and to so hold seems to do no more than to give the language of the two sections their literal and ordinarily understood meaning. To say, as is contended by appellee, that 'said seminary' was intended to mean the corporation is to extend the meaning of those words by implication, which is not permissible.

"It is said that the only entity mentioned in the charter capable of owning property is the corporation, and therefore it could not have been intended that property belonging or appertaining to the seminary was meant by section 5. We think this position is based upon a too limited meaning of the words 'belonging or appertaining,' as here used. Of course, if the language of section 5 had been that the property, of whatever kind or description, *owned* by the said seminary shall be forever free from all taxation, &c., or if, as counsel seem to assume, the words 'belonging or appertaining' here necessarily meant ownership of the property, then there would be force in this argument of counsel. It is undoubtedly true that the word 'belonging' may mean ownership, and very often does. But that is not its only meaning. Webster's International Dictionary defines it: '2. That which is connected with a principal or greater thing; an appendage, an appurtenance.' He also defines the word 'pertain' as meaning 'to belong to, to pertain, whether by right of nature, appointment or custom; to relate, as things pertaining to life.' Manifestly, the purpose of section 5 was to exempt property owned by the corporation, but it does not follow that the intention was to include in that exemption all property owned by it used for purposes of the school."

We think there is force in this reasoning, and we are disposed to concur in the result arrived at.

It is contended by counsel for plaintiff in error that the words "said seminary," contained in section 5 of the charter, referred to the corporation created by the act and not to the school buildings and grounds, and that, therefore, the exemption necessarily exempted from taxation all the property against which the judgments below were rendered.

Here are two different constructions of the exemption clause, each of which might be maintained with some plausibility. That view which limits the range of the exemption to property used in immediate connection with the seminary might seem to many to be the correct one, while in the opinion of others, the broader claim of total exemption would be the best founded. The judges of the Supreme Court of Illinois have unanimously taken the former view, while counsel for the plaintiff in error very strongly and very ably has taken and maintained the other. We can ourselves see that a construction either way would not be clearly erroneous, or, at any rate, either construction would not be so obviously erroneous as to leave no doubt upon the question. In such cases we think the rule as to the construction of statutes of exemption from taxation should be applied, and as there may be room for reasonable doubt whether a total or only a partial exemption was meant, the partial exemption should alone be recognized. Great weight ought also to be attached to the decision of a State court regarding questions of taxation or exemption therefrom under the constitution or laws of its own State. As is said in *Wilson* v. *Standefer*, (184 U. S. 399, 412:)

"Especial respect should be had to such decisions when the dispute arises out of general laws of a State, regulating its exercise of the taxing power, or relating to the State's disposition of its public lands. In such cases it is frequently necessary to recur to the history and situation of the country in order to ascertain the reason as well as the meaning of the laws, and knowledge of such particulars will most likely be found in the tribunals whose special function is to expound and interpret the State enactments."

We acknowledge and affirm the principle that this court in this class of cases must decide upon its own responsibility as to the existence and meaning of the contract, but in arriving at such meaning in a case like this, the decision of the State court is entitled to exercise marked influence upon the question this court is called upon to decide, and where it cannot be said that the decision is in itself unreasonable or in violation of the plain language of the statute, we ought, in cases engendering a fair doubt, to follow the State court in its interpretation of the statutes of its own State.

The case of *University* v. *People*, (99 U. S. 309,) is no authority for the construction contended for by the plaintiff in error. In that case the charter provided "That all property, of whatever kind or description,

belonging to or owned by the said corporation, shall be forever free from taxation for any and all purposes." The difference between the two provisions is intrinsic and material. What is lacking in the case at bar is present in the case cited, namely, a provision exempting all the property "owned by said corporation." In the case before us it is the property "belonging or appertaining to said seminary," and the word "belonging" is construed by the Supreme Court as not synonymous with "owned by," nor is the word "seminary" regarded in this connection as the equivalent of the word "corporation."

But the plaintiff in error contends that however correct the construction adopted by the State courts might be if founded upon general rules of construction pertaining to claims for exemption from taxation, it is plainly erroneous under the provision of section 6 of the charter, providing that the act "shall be deemed a public act, and shall be construed liberally in all courts for the purposes therein expressed."

To adopt the construction contended for by the plaintiff in error would call for a reversal of the rules otherwise prevailing in and governing claims for exemption from taxation. But it is nevertheless urged that if in any way the language of exemption can by a liberal construction be said to cover the whole property owned by the corporation, such construction must be adopted by reason of the provisions contained in section 6. We think this is claiming entirely too much for the language of that section.

As is therein stated, the act must be construed liberally for the purposes therein expressed. What are those purposes? In this respect the word "purposes" in section 6 is synonymous with the word "object" in section 2, as we think, and we find that the object or purpose is stated in section 2, "To furnish instruction and the means of education to young men preparing for the gospel ministry, and the institution shall be equally open to all denominations of Christians for this purpose." It is for the accomplishment of this purpose or object that the act is to be liberally construed. If a question should arise regarding the meaning of the language "to furnish instruction or the means of education," and how far the words should be extended and what they should include, the words should be liberally construed as provided for in the sixth section, because to furnish instruction or the means of education is the expressed purpose or object of the act. So in regard to the powers of the board of directors as provided for in the charter; those powers should be liberally construed for the furtherance of the object stated in the charter. To do so would not violate any well-settled rule of construction and would nevertheless be sufficient in case of doubt to turn the decision in favor of a construction more liberal in its nature than might otherwise be properly adopted. But we do not think it was intended by the language of the sixth section to provide a complete overthrow of a canon of construction such as the

one in question, which has obtained for so many years and has been so universally and so strictly adopted and adhered to by the courts of the whole country. We again resort to the language of the opinion of the Illinois court for the presentation of its own reasons for the somewhat strict construction of the exemption clause adopted by it. After stating that it should not be presumed that the legislature intended to exempt property from taxation, but such intention must appear affirmatively, and it will be strictly construed, and that any ambiguities must operate against the parties who claim the exemption, the court (p. 181) continued:

"That laws exempting property from taxation are generally subject to these rules of construction is not seriously questioned, but counsel for appellee say said rules do not apply here, because by section 6 of the charter it is provided that the act 'shall be construed liberally in all courts for the purposes therein expressed.' We do not think this language was intended to or could be held to change or qualify the general rules of construction applicable to the section under consideration. Here the very question to be determined is, what is the purpose expressed in that section? And to say that liberal rules of construction must, under section 6, be applied in favor of the contention that all property belonging or appertaining to the corporation is exempt would be to beg the whole question. In determining what purpose is expressed in the section, resort must necessarily be had to the general rules for considering such laws. When that purpose is ascertained, liberal rules of construction, if necessary, are to be resorted to, to give effect to such purpose. . . . We think this case turns upon whether or not the words 'said seminary,' used in the fifth clause, should be given the meaning of 'said corporation.' In our opinion the application of the rules of construction above referred to do not warrant such a construction."

This is not such an unnatural, strained or unreasonable construction of the act as shows it to be erroneous, and while it might be otherwise construed so as to effect a total exemption, we are not prepared to hold that the State court so clearly erred as to call upon us to reverse its determination. We, therefore, adopt, though we admit with some hesitation, the views of the State court, which lead to an affirmance of the judgments.

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.

16575

Supreme Court of the United States.

Nos. 140 and 265.—October Term, 1902.

The Board of Directors of The Chicago Theological Seminary, Plaintiff in Error,
vs.
The People of the State of Illinois ex rel. Samuel B. Raymond, County Treasurer and ex officio Collector of Cook County, Illinois.

In error to the Supreme Court of the State of Illinois.

[February 23, 1903.]

Mr. Justice White, with whom concurs Mr. Justice Brown and Mr. Justice Holmes, dissenting.

The court, in stating the facts, refers to a previous opinion of the Supreme Court of the State of Illinois, announced in a case between the same parties, involving a question of law like unto that which arises on this record. In that case, however, the Supreme Court of Illinois but reversed and remanded, ~~not~~ for a new trial, and hence the judgment was not final and susceptible of being brought to this court to test the issues involing the constitutional right under the contract. After the record in the previous case reached the trial court the case was not further pressed by the plaintiff for such length of time as to cause it, under the Illinois statute, to be in effect abandoned. The question here now for review is not, therefore, controlled by the thing adjudged arising from the previous judgment. The court does not now decide to the contrary, but the matter is referred to by me lest a misconception be caused by the mention made of the subject in the opinion of the court.

I do not dispute the elementary proposition that exemptions from taxation are *stricti juris*, that is, not to be extended by implication. This, however, does not imply that a contract exemption is to be disregarded, simply because it may be possible for a subtle mind to suggest a possible doubt as to the exemption, however conjectural may be the assumption on which the doubt is rested. Nor does the rule mean that, because it is deemed that a particular contract exemption was an unwise one for the public interest, therefore the meaning of the contract is to be disregarded by a court in order to relieve the public from the burdens arising from the obligations of the contract. The rule, as understood by me, is this only, that the language from which an exemption is claimed to arise is to receive a literal construction, and is not to be extended so as to embrace a right not within the clear meaning of the contract. I do not, moreover,

dispute the principle that where the contract which is asserted to have been impaired arises from a State law, it is the duty of the court, in case of doubt as to the meaning of the contract, to adopt the construction given to it by the State court. This rule does not imply that because the State court has decided against the contract right, therefore there is doubt and, hence, the resulting duty to affirm the action of the State court. If such were the case, the power of this court to review the action of State courts concerning the alleged impairing of the obligations of a contract would be at an end wherever the contract took its origin in State law. The significance of the rule is this, that if, fairly considering the issue of contract arising from the State law and its alleged impairment, this court, in the exercise of its independent judgment, remains in doubt, the decision below construing the State law will be allowed to solve the doubt, and thus secure the affirmance of the judgment. The obligation on me as a member of the court is identical with that which rests on the court.

Coming to apply these rules to the case in hand, my mind has no doubt whatever as to the true meaning of the contract. Let me state what the contract is, in order to show why I do not doubt on the subject.

The first section of the act from which the contract arises creates a corporation for a religious and benevolent purpose, under the name of "The Board of Directors of the Chicago Theological Seminary." The second section provides as follows:

"That the seminary shall be located at or near the city of Chicago. The object shall be to furnish instruction and the means of education to young men preparing for the gospel ministry, and the institution shall be equally open to all denominations of Christians for this purpose."

The third section provides for the board of directors; the fourth relates to the powers of the board; and the fifth is as follows:

"That the property, of whatever kind or description, belonging or appertaining to said seminary, shall be forever free and exempt from all taxation for all purposes whatsoever."

The sixth section provides when the act shall take effect, and declares that it "shall be construed liberally in all courts for the purposes therein expressed." Does the exemption covered by the fifth section relate to the Theological Seminary, the corporation created by the act, or does it apply only to a building to be erected by the corporation? is the question at issue.

It is admitted that if the exemption applies to the Theological Seminary, the contract has been impaired and the judgment should be reversed. It is now decided that the exemption relates only to the seminary, that is, to the buildings, and, therefore, the judgment is affirmed. Now, giving to the words of exemption their natural meaning, and construing them strictly, there does not seem to me to be a doubt that they relate to the Theological Seminary incorporated by the act, and referred to as such in

its first section. My mind does not enable me to see what else the words can mean. If it was intended merely to exempt a building or buildings, language could have been employed which would have aptly conveyed such meaning. Instead of doing this, the language used in the act—as I understand it—excludes such construction, since it declares that the exemption shall relate to the property "belonging or appertaining to said seminary;" the word "belonging" clearly referring to the corporation created by the act and on whom was conferred the power to own and possess property. Emphasis is added to this view when the scope of the exemption is borne in mind; since it embraces not a mere building or its accessories, but the property of whatever kind or description, thus describing and referring to the power to own and acquire property of every kind and description, real or personal, conferred on the Theological Seminary by the act. It is further to be observed, as throwing light upon the subject, that in the fourth section, immediately preceding the grant of the exemption, the particular buildings or place of learning to be constructed by the Theological Seminary is twice referred to as the institution, thus showing that the legislative mind had immediately before it when the exemption was granted the distinction between the Theological Seminary as a corporate entity to which the exemption was granted, and the institution to be constructed and supported by the Theological Seminary. I cannot, moreover, conceive that the words of the statute, immediately following the section granting the exemption, commanding that the provisions of the contract "shall be liberally construed in all courts for the purposes therein expressed," should have what seems to me their plain meaning, disregarded, by causing them to refer, not to the act as a whole, but to some particular provision in it. I find nothing in the language which lends itself to such a view.

I therefore dissent.

I am authorized to say that Mr. Justice BROWN and Mr. Justice HOLMES concur in this dissent.

True copy.

Test:

Clerk Supreme Court, U. S.